

**HEAT & FROST INSULATORS
OF NORTHERN CALIFORNIA
Local 16 Health & Welfare Fund**

COLLECTION PROCEDURES

March 2006

HEAT & FROST INSULATORS OF NORTHERN CALIFORNIA

Collection Procedures

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**HEAT & FROST INSULATORS
OF NORTHERN CALIFORNIA
Local 16 Health & Welfare Fund**

Collection Procedures

I. POLICY FOR HEALTH COVERAGE BY SELF-PAY

1. Administrator to send notice of “delinquent employer self-pay” provisions to employees, offering three (3) continuous month maximum for coverage by self-pay.
2. Employees to provide paystubs if necessary to determine eligibility.
3. Payments due on 1st of month for coverage, after initial payment for delinquent month.
4. First month billed at reduced rate used for unemployment self-pay. 20 day grace period allows payments to be received until 21st of month of coverage.
 - If no payment received, coverage terminates on last day of prior paid month.
 - If payment received later than 21st . . . (Accept payment for coverage?) (Return to employee?) (Accept but charge?) (Administrative fee?)
 - If payment received in next month, (Apply to missed month?) (Charge administrative fee?) (Return to employee?)
5. Coverage terminates after three (3) continuous paid months, unless COBRA (insufficient hours) or other provisions (disability, unemployment) for self-pay apply. Total COBRA coverage will include the three (3) months of self-pay already used.
6. Upon recovery of delinquency from employer, self-payments to be refunded to employee. If recovery is partial, refunds to be prorated among self-paying employees.

II. POLICIES FOR COLLECTION OF LIQUIDATED DAMAGES, INTEREST, FEES/COSTS

1. Greater of ten percent (10%) of delinquent contributions or \$25 liquidated damages

due on contribution delinquencies per month. If lawsuit is filed, liquidated damages at greater of 20% of delinquency, or \$50.

2. Interest of twelve percent (12%) per annum to be assessed from 21st of month due, until paid.
3. Add reasonable expenses incurred in collection efforts, such as attorneys'; and accountants' fees, costs of court, attachment, bond pursuit, etc.
 - A. Upon of delinquent contributions: subsequent damages, interest and applicable fee/costs billed. If unpaid, next contribution payment applied to satisfy amount due, creating delinquencies until account is current.
 - B. **Upon Employer's Request for Waiver of Liquidated Damages/and or Interest, Fees/Costs**
 1. Request must be in writing;
 2. Maximum of one month in twelve may be waived, effective with liquidated damages incurred after March 20, 2006 (2/06 hours); interest, shall not be waived; fees and costs;
 3. No waiver approved if employer has outstanding delinquencies, or has had a waiver within preceding twelve months;
 4. Where multiple months of liquidated damages and interest assessed, any waiver granted shall apply to earliest month of delinquency;
 5. Liquidated damages calculated on employer's total delinquent contributions for any month; not timely paid in full;
 6. If waiver granted, treat subsequent affected months as if LDs waived had not been incurred. (Subsequent month, if timely paid, incur no LDs/interest unless fees and costs reduced application of payment.) Administrator to inform employer that no further waivers approved until employer has been free of delinquencies for twelve months;
 7. Notwithstanding general policies above, Trustees may waive all or part of LDs/interest/fees, for good cause shown.

III. CONTRIBUTION DELINQUENCIES

Contributions due on or before 20th day of month; interest assessed as of 21st of month due.

Steps Taken By Administrator

	Time	Action
1	<i>Second business day following 20th, if no payments <u>received</u> by 20th by bank, administrator, or counsel</i>	Assess liquidated damages and interest as of Due Date; List of delinquent employers sent to Union.
2	<i>On or before 20th of month, if contribution has not been received</i>	Delinquency notice sent to employer and demand for payment within 7 days, including liquidated damages and interest. Self-pay notices sent to employees.
3	<i>3 business days after due on demand, if payment has not been received</i>	Referred to attorney, with executed collective bargaining agreement and spreadsheet showing applicable rates, LDs and interest through stated date of spreadsheet. Unreported months to be estimated on the basis of the last received report.
4	<i>Upon receipt of any delinquent payments referred to attorney</i>	Advise attorney by telephone or fax immediately and ask for fee amount. Payments allocated pro rata among applicable funds unless otherwise required. Send billing for liquidated damages, interest and applicable amounts due.
5	<i>Upon employer=s failure to pay LDs/interest/fees</i>	Apply employer's next contribution payment to satisfy; add to next billing; AND, add to future delinquency demand referred to counsel.
6	<i>Upon employer=s written request for waiver of LDs/interest/fees</i>	Request presented to trustees for waivers according to their policies. Waivers are in the discretion of the Trustees for good shown.
7	<i>Upon waiver</i>	Notice of waiver sent to employer.

Steps Taken by Attorney

	Time	Action
1	<i>Upon receipt of referral</i>	Demand letter sent.
2	<i>Upon employer=s written request for waiver</i>	Follow procedure under (6) above.
3	<i>10 days after demand letter, if delinquency continues.</i>	File lawsuit, including liquidated damages increase to 20%.

IV. STIPULATED JUDGMENTS REQUIRING PERIODIC PAYMENTS

Steps Taken By Attorney

	Time	Action
1	<i>Upon entry of stipulated judgment</i>	Copy sent to administrator.

Steps Taken By Administrator

If employer fails to pay current contribution:

	Time	Action
1	<i>2nd business day after 20th of month</i>	Telephone attorney to advise of default; provide attorney with spreadsheet including 20% LDs; interest to the specified date of spreadsheet.

Steps Taken By Attorney

	Time	Action
1	<i>Upon receipt of notice of default of current payments, or on defaulted stipulated payment</i>	Written notice of default to employer.
2	<i>If no cure of default</i>	Execution commenced on outstanding balance and new lawsuit for current delinquency filed, if necessary.

V. **DELINQUENCIES AFTER EXPIRATION OF COLLECTIVE BARGAINING AGREEMENT**

Steps Taken By Administrator

	Time	Action
1	<i>Upon expiration of collective bargaining agreement</i>	Determine amount of contribution under NLRA status quo rule (same amount as under expired CBA until impasse reached).
2	<i>When delinquency occurs</i>	Follow procedure under II and III above.

Steps Taken By Attorney

	Time	Action
1	<i>Upon receipt of referral</i>	Demand letter sent.
2	<i>10 days after demand letter</i>	File unfair labor practice charge with NLRB.

VI. COLLECTION PROCEDURES AFTER COMPLIANCE TESTING

Steps Taken By Accountant

	Time	Action
1	<i>Upon Employer=s imminent bankruptcy</i>	Notify counsel and Board of Trustees for determination of compliance testing.
2	<i>Upon Employer=s withdrawal</i>	Perform exit compliance test immediately.
3	<i>Upon failure of Employer to provide adequate records</i>	Include in reports the “rebuttable presumption that all payments to employees were wages for which contributions are due.”
4	<i>2 weeks following testing request letter and follow-up telephone calls, upon refusal or failure of employer to schedule or continue testing</i>	Written request to attorney to demand compliance.
5	<i>Upon completion of testing</i>	Date of completed report to be stamped on report. Reports showing no discrepancies: mailed to employer, union and administrator simultaneously. Report drafts with and without accountant=s exceptions, which show underpayments and/or overpayment: mailed to union and to employer for two week review, requesting communication of any objections.
6	<i>Upon objection by Employer</i>	Contact union for facts or attorney for law, then attempt resolution with Employer. Unresolved objections brought to Subcommittee for determination of action.
7	<i>After two week period from mailing of draft</i>	Final report sent to administration for billing, including testing costs of examination, in accordance with Trust policy.

Steps Taken By Administrator

	Time	Action
1	<i>Upon Employer=s withdrawal from trust</i>	Notify accountant to schedule immediate compliance testing.
2	<i>Upon Employer=s filing of bankruptcy</i>	Notify counsel and Trustees for determination of compliance testing.

A. UNDERPAYMENTS

	Time	Action
1	<i>Within one week after receiving report</i>	<p><u>Undisputed test results:</u> Payroll compliance demand letter for net underpayment due, plus liquidated damages (greater of \$25 or 10% of the net underpayment determined by testing, plus interest on net underpayment from date contribution due to 10 days following demand letter), and testing fees if net underpayments exceed \$999.99. (50% of testing fees charged for net underpayments of \$1,000 to \$5,999; full fee payable for net underpayments of \$6,000 or more.) Net under-payments to be determined by deducting net improper payment (reduced by 10% administrative fee), if any, from it.</p> <p><u>Disputed test results:</u> Upon objection by Employer, advise auditor of objection, for procedure under paragraph 6 above. Testing fees shall not exceed gross underpayment unless willful violation found.</p>
2	<i>Ten days after demand</i>	<u>Accounts owing \$2,500 or more:</u> Referred to attorney with a copy of compliance testing report, spreadsheet, demand letter and signature pages from the collective bargaining agreements covering the periods tested. Include any other amounts owing by the employer, i.e., liquidated damages and interest from prior delinquencies.
3	<i>1st day of each month</i>	Update of status of billing after compliance testing (Exhibit M) sent to trustees and attorney.

B. OVERPAYMENTS

	Time	Action
		<p><u>Accounts owing under \$2,500:</u> Administrator to pursue in small claims court or accrue employer's total delinquencies to \$2,500 then refer to counsel as above.</p>
1	<p><i>For overpayments due within three years prior to date of offset to Employer</i></p>	<p>Research and recover (by submission of audit report or demand) premiums and claims improperly paid into welfare plan as a result of Employer=s overpayments. Consult with counsel to as any rebates due. Credit or refund net overpayment, reduced by 10% administrative charge on net improper payment.</p> <p>Welfare Fund credit or refund allowed only to the extent the total overpayment exceeds the total of premiums or claims paid, which would not have been paid if improper contributions had not been received.</p> <p>Vacation/holiday credit or refund allowed only where each overpayment exceeds underpayment, on employee by employee basis.</p> <p>Audit report may be considered employer=s written request for refund. No credit or refund allowed for overpayments made earlier than three years prior to date of submission of audit report to Employer.</p>

Steps Taken By Attorney

	Time	Action
1	<i>Upon indication of Employer=s imminent or recent bankruptcy</i>	Notify Board of Trustees for determination of compliance testing.
2	<i>Upon receipt of accountant=s request for assistance for access</i>	Demand letter sent to Employer.
3	<i>Ten days after demand letter</i>	File lawsuit to compel compliance testing and collect amounts found due.
4	<i>After referral from administrator</i>	Demand letter sent for collection.
5	<i>Ten days after demand letter</i>	Lawsuit filed, including liquidated damages increase to 20% and interest from contribution due date through judgment.

Steps Taken By Local Union

	Time	Action
1	<i>Upon Employer=s withdrawal from trust</i>	Notify accountant to schedule immediate compliance testing.
2	<i>Upon indication of employer withdrawal or imminent bankruptcy</i>	Notify counsel and Board of Trustees for determination of compliance testing.
3	<i>Within two weeks after report received</i>	Review report and advise accountants of facts relevant to their exceptions or Employer=s objections.

**Heat & Frost Insulators of Northern California
Local 15 Health & Welfare Fund**

_____, 20

VIA REGULAR & CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Re: Notice of Delinquency

Dear Employer:

Your remittance report and contribution for hours worked during the month of _____, 20 __, were due in this office by the 15th day of the following month and as of this date have not been received.

The rules and regulations established by the Trust Funds require that in addition to the amount of your unpaid contributions, liquidated damages (10% of monthly contributions or \$150.00, whichever is greater up to a maximum of \$750.00 per month), and interest (currently at the rate of _____ per annum), be assessed against you if your payment is not received by the end of the month. Your unpaid contributions, together with liquidated damages and interest are now due and owing and must be received by this office no later than 10 days from the date of this letter.

Your failure to submit your remittance report and pay your contributions will violate the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). It will also violate your Collective Bargaining Agreement with the Union, and the Declarations of Trust of these Trust Funds.

If you do not submit the required report forms and pay all amounts owed within 10 days of the date of this letter, the Trust Funds will refer the matter to their attorney for immediate and aggressive legal action. In that event, liquidated damages will increase to 20%, and the court will order that you additionally pay interest, reasonable attorney's fees and costs of suit, as required by ERISA.

In addition, contributions to the Monthly Welfare Plan for non-bargaining unit employees will not provide coverage for any month in which any prior contribution delinquencies (including liquidated damages, interest, and any other applicable charges) remain for hourly employees (those working under the Collective Bargaining Agreement). Any contributions paid to the Monthly Welfare Plan for a month when such delinquencies exist will be applied to satisfy such delinquencies.

To avoid the above consequences and minimize your debt, please forward your report form and all amounts owing to this office immediately.

Sincerely,
Administrative Office