

AMENDED AND RESTATED
PAYROLL COMPLIANCE AUDIT POLICIES AND PROCEDURES
of the
CHICAGO LABORERS' PENSION, WELFARE and RETIREE WELFARE FUNDS
EFFECTIVE: NOVEMBER 11, 2019

The Collection Committee has been established by the Boards of Trustees of the Laborers' Pension Fund, the Laborers' Welfare Fund of the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity, and the Chicago Laborers' District Council Retiree Health and Welfare Fund ("Funds") and has been delegated plenary authority to oversee the collection activities of the Funds and to establish, maintain, implement and interpret uniform collection policies and procedures. The following Payroll Compliance Audit Policies and Procedures ("Audit Policy") are being adopted by the Collection Committee for the Funds and also, as applicable, for the affiliated ancillary funds and the Construction and General Laborers' District Council of Chicago and Vicinity ("District Council") for which the Funds act as collection agent by agreement.

This Audit Policy shall apply to Contributing Employers, and may be modified from time to time by the Boards of Trustees, in their sole and unrestricted discretion. In this Audit Policy, the term "Contributing Employer" means any entity obligated to remit contributions to the Funds and affiliated ancillary funds and union dues to the District Council on behalf of its employees engaged in Covered Employment, as required pursuant to the Funds' respective Agreements and Declarations of Trust. The Collection Committee has full discretion in interpreting and applying this Audit Policy and their interpretation and application thereof shall be conclusive and binding on all parties.

I. Policy for Scheduling of Payroll Audits

- A. Contributing Employers to the Funds shall be audited periodically by independent third party accounting firms selected by the Funds. The Fund Office shall prepare a schedule for auditing Contributing Employers in accordance with the following procedures.
 1. Two types of payroll audits shall be conducted: "Full Audits" and "Sampling Audits."
 - a. Full Audits – payroll and other records on all employees are examined.
 - b. Sampling Audits –
 1. a selection of payroll and other records are tested to enable the compliance auditor to make a reasonable determination that there are no delinquencies. The documents reviewed should include a review of all types of records listed in Section III (A) of this Audit Policy, "Records Required to be Retained by Employers and Produced for Audits".
 2. Where a Sampling Audit discloses delinquencies or related record discrepancies, a Full Audit shall be conducted.

2. Contributing Employers shall be scheduled for either Full Audits or Sampling Audits in groups based upon the contribution histories of the Contributing Employers.
 - a. Either a Full Audit or a Sampling Audit shall be conducted at least once every five years.
 - b. Any Contributing Employer that fails to schedule a payroll audit and submit records for review within 45 days from the date of the payroll audit request will be liable for all costs of compelling and enforcing the payroll audit request, including payroll audit costs and the Funds' reasonable attorneys' fees and costs.
- B. New Contributing Employers
 1. An important purpose of audits for New Contributing Employers is to inform Contributing Employers of the procedures for contributing to the Funds and the requisite records to be maintained.
 2. New Employers shall be scheduled for payroll audits within the first year in which contributions to the Funds are required.
 3. If there are a sufficient number of employees of a New Employer, the payroll auditor may perform a Sampling Audit to determine if the Contributing Employer is maintaining accurate records and making required contributions; otherwise the payroll auditor will perform a Full Audit.
- C. Honor Roll Employers
 1. An Honor Roll Employer is a Contributing Employer with no more than two late payments in any Plan Year (the period from June 1 to May 31) and whose most recent payroll audit reveals a delinquency of no more than the greater of \$1,000 or 2% of its required contributions during the audit period. They are required to submit to audits every three to five years. An inadvertent shortage of no more than the greater of \$1,000 or 2% of the Contributing Employer's required contributions determined on a Full Audit covering three or more years of contributions to the Funds shall not disqualify a Contributing Employer from inclusion in this group
 2. A Contributing Employer shall be designated an Honor Roll Employer following a payroll audit showing adequate recordkeeping and correct payments. The Honor Roll Employer shall then be selected randomly for an audit between the third and fifth year thereafter.
 3. Honor Roll Employers may opt for a scheduled payroll audit every three years.
 4. Sampling Audits shall be used for Honor Roll Employers if they have sufficient employees to warrant use of sampling methods. If a Sampling Audit discloses inaccurate or incomplete recordkeeping or evidence of delinquencies, a Full Audit shall be performed.
- D. Notwithstanding the foregoing, the Fund Office may, in its discretion, determine that a Full Audit shall be done of any Contributing Employer or that, where a Sampling Audit is to be conducted, specific records shall be produced.
- E. Other Contributing Employers: Contributing Employers that are not classified as New or Honor Roll Employers, or that have assessed significant delinquencies to the Funds or

any of the affiliated ancillary funds to which contributions are owed pursuant to the collective bargaining agreements of the District Council, shall be scheduled for Full Audits at least once every three years.

- F. Employers Subject to Special Audits (For Cause): At the discretion of the Fund Office, Full Audits of Contributing Employers may be conducted at any time based upon information concerning possible delinquencies, e.g., failure to file monthly Contribution Reports, failure to pay contractually-required wage rates, information concerning a possible closing or sale of business, information that the Contributing Employer is operating an alter-ego, or other such similar bases suggesting possible delinquencies.
- G. A Contributing Employer shall bear the costs of any payroll audit:
 - 1. if the findings show a delinquency of the greater of \$1,000 or 2% of the Contributing Employer's required contributions during the audit period;
 - 2. which was compelled by a lawsuit; or
 - 3. if the Contributing Employer does not have the appropriate wage and fringe benefit bond on file with the Funds.
- H. Contributing Employers who cease contributing to the Funds shall be audited within a reasonable period of time following the cessation of contributions to determine any obligations to the Funds. Nothing herein shall restrict the rights of the Funds to audit the books and records of a Contributing Employer who ceased contributing but remains bound by the CBA, should the Funds reasonably believe the Contributing Employer to have continued operations.

II. Policy for Retention and Production of Employer Records

- A. Except as otherwise provided herein, all Contributing Employers to the Funds shall maintain and make available for inspection and copying by the payroll auditor the records listed in Section III of this Policy.
- B. Any Contributing Employer who fails to maintain and make available for inspection and copying to the payroll auditor the requisite records listed in Section III of this Audit Policy shall bear the burden of proof with respect to the exclusion of any employee from coverage of the collective bargaining agreement with the District Council.
 - 1. In those cases where a Contributing Employer asserts that its employee is excluded because he or she is a member of another bargaining unit, the Contributing Employer must submit tangible evidence of that fact, including, but not limited to:
 - a. A union membership card;
 - b. Contribution records maintained for the benefit funds of the other bargaining unit and corresponding proof of payment;
 - c. A commercial driver's license if it is asserted that an employee is a truck driver rather than a laborer; and/or
 - d. Workers' compensation policies, forms, and applications listing an employee's job classification, or other business records.
 - 2. An affidavit from a Contributing Employer's representative unsupported by documentary evidence shall not be sufficient to meet the Contributing Employer's burden of proof.

3. Affidavits which are solicited or obtained ex parte by a Contributing Employer's representative, for employees for whom there is no corroborative evidence in the form of records maintained in the ordinary course of business, shall not be sufficient to meet the Contributing Employer's burden of proof.
 4. Nothing herein shall restrict the Funds from seeking contributions from a Contributing Employer for bargaining unit work performed by its employees.
- C. Rebuttable Presumptions
1. When a Contributing Employer has failed to maintain or make available the requisite records, there shall be a rebuttable presumption that any employee listed as a possible laborer by the Funds' payroll auditor or the Fund Office was a laborer.
 2. If no record of wage rates was made available by the Contributing Employer, there is a rebuttable presumption that the employee was paid \$18.00 per hour.
 - a. When evidence exists that a different hourly rate was paid to employees of a Contributing Employer that failed to maintain the required records, at the discretion of the Fund Office, a different hourly rate may be presumed for purposes of determining the amount of contributions owed by the Contributing Employer to the Funds.
 - b. If evidence shows that a Contributing Employer paid a rate lower than \$18.00 per hour to any employees doing bargaining unit work, then the lower rate shall be presumed to be the actual rate paid to all employees for whom adequate records were not kept.
 - c. If no record of the number of hours worked was maintained by the Contributing Employer, the Fund Office will not assume an employee worked more than 72 hours per week. However, if evidence exists of a different number of hours worked as opposed to the maximum of 72 hours per week, the Fund Office may apply a different number of hours for determining the contributions owed, and this number of hours worked shall be presumed correct.
 3. All wages computed as provided in this Section II(C) shall be presumed to be paid as straight-time wages regardless of the number of hours worked unless the Contributing Employer has provided documentation, in the form required by the terms of this Audit Policy, showing that it followed the requirements of the Fair Labor Standards Act and/or the applicable collective bargaining agreement as to the payment of overtime.

III. Records Required to be Retained by Contributing Employers and Produced for Audits

- A. Certain records shall be maintained and retained by all Contributing Employers from the contribution date for at least the length of the statute of limitations provided for enforcement of a contractual right under Illinois law.
 - 1. The Funds reserve their right to inspect and copy a Contributing Employer's records for a time period in excess of the applicable Illinois statute of limitations referred to in Section III(A) should the Funds suspect a Contributing Employer has engaged in fraud in the reporting and payment of fringe benefit contributions and/or union dues.
- B. Except in cases of suspected fraud, nothing herein shall purport to modify the length of time from when the Funds may seek delinquent contributions from a Contributing Employer which is covered by a collective bargaining agreement that limits the length of time under which the Funds may collect delinquent contributions.
- C. The following records shall be maintained and retained in accordance with Sections III(A) & (B), and shall be produced for inspection and copying by the payroll auditor upon written request:
 - 1. Quarterly and annual payroll tax returns, including, but not limited to, federal quarterly forms 941, federal annual forms W-2, W-3, 940, 1099, and state quarterly unemployment returns (forms UC-3);
 - 2. Payroll journals and/or registers which include or identify employees' social security numbers, hourly rates of pay, hours worked, and the time period in which work was performed;
 - 3. Individual earnings records for all employees of the employer not shown on payroll journals or registers, including social security numbers and work classifications (or code or clock or ID numbers), hourly rates of pay, hours worked, and the time period in which the work was performed;
 - 4. Cash disbursement journals and general ledgers;
 - 5. Copies of all contribution reports and proof of payment (canceled checks or records of canceled checks) of all contributions to the Laborers' Funds and to all other trade union fringe benefit funds to which the Contributing Employer also contributed;
 - 6. Copies of all union dues records and proof of payment (canceled checks or records of canceled checks) of all union dues submitted to the District Council and to all other trade unions to which the Contributing Employer also submitted union dues;
 - 7. Records showing all amounts paid to all persons or entities that performed work for the Contributing Employer as independent contractors or subcontractors, if any, including copies of any federal forms 1099 issued by the Contributing Employer;
 - 8. Daily time records filed by employees or supervisors;
 - 9. Source documents and lists of job codes and equipment codes;
 - 10. Certified payrolls for jobs where such payrolls are required;

11. Employee personnel files including, but not limited to, last known addresses and telephone numbers, and any documents which demonstrate employees' job classifications and/or status as an apprentice, journeyman, foreman, superintendent, or supervisor;
 - a. Confidential medical records or other similarly private records not relevant to the establishment of an employee's job classification shall not be disclosed.
 12. Bank account statements and canceled checks from any account used in conjunction with the Contributing Employer's business;
 13. Workers' compensation insurance information including, but not limited to, the insurance policy with the employee classifications it contains, mail audits, preliminary audits, and field audits conducted by the insurance company; and
 14. Any other documents requested by the Funds to ensure the Contributing Employer is paying contributions on behalf of its employees as required by the collective bargaining agreement and/or the Funds' respective Agreements and Declarations of Trust.
- D. If records of all hours worked, rates of pay, and classifications are not provided in the records listed in items one through ten, the Contributing Employer shall maintain monthly lists of all employees not shown on payroll records, showing social security numbers, work classifications (or code/clock/ID numbers), rates of pay, and hours worked.
- E. Honor Roll Employers shall be required only to produce basic records needed by the payroll auditors to perform an audit, specifically items one through seven in Section (III)A.
1. If an initial examination of such limited records discloses inaccurate or incomplete recordkeeping or evidence of delinquencies, the payroll auditor may request additional records listed in Section III(C).
 2. In the absence of evidence of a deliberate failure by an Honor Roll Employer to contribute on behalf of a bargaining unit employee, the rebuttable presumptions provided for in Section II(C) of this Audit Policy shall not apply to such Honor Roll Employer.