



LOCAL 36 BENEFIT FUNDS

2319 CHOUTEAU AVE., SUITE 300 · ST. LOUIS, MO 63103 · www.smw36benefits.org
Tel: (314) 652-8175 Toll-Free: (800) 741-9411 Fax: (314) 652-0338

August 19, 2016

To: Employers Contributing to the International Association of Sheet Metal, Air, Rail and Transportation Workers ("SMART") Local Union No. 36 401(k) Plan

From: Trustees

Re: Rules relating to contributions

Dear Contributing Employer:

The International Association of Sheet Metal, Air, Rail and Transportation Workers ("SMART") Local Union No. 36 401(k) Plan ("SMART Local 36 401(k) Plan") receives both Mandatory Employer Contributions—that is the \$0.50/hour fringe benefit contribution paid by the Employer as set out in a Collective Bargaining Agreement—and Voluntary Employee Wage Deferrals. As explained below, it is very important that you as an Employer comply with the rules for reporting and transmitting contributions. This letter is a reminder about those rules.

YOU MUST PAY YOUR CONTRIBUTIONS BY THE 15TH OF THE MONTH

The employer reports, the Mandatory Employer Contributions, and the Voluntary Wage Deferrals are **ALL** due to the Fund Office no later than the 15th calendar day of the month following the month in which the contributions are accrued. For example, contributions related to June hours and wages are due to the Fund Office by July 15. **Employees are notified if an Employer is late in paying contributions and transmitting voluntary wage deferrals.**

YOU WILL OWE INTEREST AND LIQUIDATED DAMAGES ON ALL LATE CONTRIBUTIONS

If you are late in paying your 401(k) Mandatory Employer contributions then you will be required to pay, in addition to the contributions:

- **liquidated damages**: \$100.00 for each month that an Employer contribution is delinquent for one or more days up to a maximum of 20% of the contribution; and
- **interest**: At the rate of 1½% per month (1/30 of 1½% for each day).

For example, if \$2,000 in Mandatory Employer contributions are paid 60 days late then the Employer will owe an additional \$200 in liquidated damages and \$60 in interest.

YOU WILL ALSO OWE LOST EARNINGS ON LATE VOLUNTARY EMPLOYEE WAGE DEFERRALS

Voluntary Employee Wage Deferrals, unlike Employer contributions, are monies withheld from your employees' wages and, therefore, they are plan assets from the time they are withheld. Because Voluntary Employee Wage Deferrals are plan assets from the time the Employer withholds the money from the paycheck the Employer becomes a fiduciary as to that money. As a fiduciary, **the failure to transmit 401(k) wage deferrals to the Fund by the 15th of the month is an ERISA prohibited transaction subjecting the Employer to excise taxes and lost earnings in addition to liquidated damages and interest.**

Lost earnings on 401(k) wage deferrals are to be calculated in accordance with the Department of Labor's formula established in its VCR website calculator. When lost earnings are collected, employees' individual accounts will be credited with lost earnings. If that \$2,000 had been Voluntary Wage Deferrals due to the Fund on May 15, 2016 and paid on July 15, 2016 then you will be required to pay, in addition to the amounts withheld from your employees' wages:

- **liquidated damages:** \$100.00 for each month delinquent for one or more days up to a maximum of 20% of the contribution—in this example that is \$200;
- **interest:** At the rate of 1½% per month (1/30 of 1½% for each day)—in this example that is \$60; and
- **lost earnings:** The lost earnings are determined using the DOL calculator—for this example that is \$13.40

The total amount due above and beyond the \$2,000 in withheld wages is \$273.40, simply for delaying the payment of contributions for 60 days. The amount due, of course, is higher if more contributions are due or if the delay in payment is longer and can even exceed the contribution amount.

As noted, interest, liquidated damages and lost earnings can be significant, therefore, it is in the Employer's best interest to pay the contributions when they are due.

ENFORCEMENT BY DEPARTMENT OF LABOR

As noted, the failure to transmit Voluntary Wage Deferrals withheld from your employees' wages is a DOL prohibited transaction. If these payments become delinquent and the Fund Office cannot quickly collect the amounts due then the matter can be turned over to the Department of Labor for collection and other action.

EXCISE TAXES MAY BE DUE ON LATE WAGE DEFERRALS

In addition to the Interest, liquidated damages and lost earnings which are paid to the SMART Local 36 401(k) Plan and the Participant an Employer who is delinquent in paying contributions is subject to Excise Taxes due to the Department of Labor.

YOUR RIGHT TO HAVE EMPLOYEES MAKE VOLUNTARY WAGE DEFERRALS CAN TERMINATE

If an Employer is delinquent in the payment of 401(k) wage deferrals for any 3 months in a 12 month period, the Board of Trustees can terminate the Employer's right to participate in the Plan for future wage deferrals (this does not eliminate the Employer's obligation to pay Employer contributions). Employees will be notified if the Employer loses the right to participate in wage deferrals and the Employer cannot reapply for participation for 12 months after participation is terminated.

COSTS OF LITIGATION

Finally, the Trustees have an obligation to make all reasonable efforts to collect both Mandatory Employer Contributions and Voluntary Employee Wage Deferrals. These efforts can include bond claims, claims on payment bonds of general contractors and others, claims on public works bonds, mechanic liens, and filing suit. If the SMART Local 36 401(k) Plan has to take these steps to collect delinquent contributions you can be held responsible for the Plan's costs of collection including legal fees. In addition to the costs for which you would be responsible having a judgment against you or a claim against your bond will have a negative impact on your business' credit.

The best way to avoid the extra costs and damages is to always properly report and pay your contributions, mandatory and voluntary wage deferrals, in a timely manner.

If you have any questions please contact the Fund Office at 314-652-8175.