NORTHERN CALIFORNIA PIPE TRADES TRUST FUNDS FOR UA LOCAL 342

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TO: ALL CONTRIBUTING EMPLOYERS

RE: IMPORTANT ANNUAL REMINDER – Consequences of Transmitting Deferred 401(k) Employee Contributions Late

The U.S. Department of Labor ("DOL") is **serious** about Employers making timely Employee 401(k) deferrals to 401(k) Plans [Employees have deferred amounts out of wages to the 401(k) Plan] and as a result, imposes special rules and penalties when an Employer fails to timely contribute the 401(k) deferrals for its Employees. This notice summarizes issues related to late 401(k) deferrals to the Northern California Pipe Trades Supplemental 401(k) Retirement Plan ("Plan").

YOUR OBLIGATION TO REMIT Timely Contributions of 401(k) Deferrals is Very Important—Excise Tax Assessed. Contributions to the 401(k) Plan (and other related Northern California Pipe Trades Trust Funds) must be submitted to the Trust Fund Office **no later than the 15th business day following the month in which the hours were worked. However, the 15th business day rule is not a safe harbor pursuant to the DOL guidelines. As such, if the 401(k) contributions can be reasonably segregated sooner from your general assets, then these funds must be remitted earlier.** Per the Collective Bargaining Agreement ("CBA") and Trust Agreements, if contributions are late (meaning if payment is not received on or before the 20th day following the month in which hours were worked), liquidated damages of 20% are assessed on the delinquent contributions and interest at the rate of 12% per annum is also assessed. **Please further note, notwithstanding the above CBA language regarding liquidated damages and interest, the IRS and DOL guidelines still require Employee deferrals to the 401(k) plan must be made by the 15th day of the month for all work performed in the preceding month (without the extension to the 20th day of the month under the CBA) to avoid any IRS-assessed excise tax along with lost earnings for Plan Participants and other potential adverse ramifications. IMPORTANT:** If any delinquent contributions are Employee 401(k) deferrals, the law treats the Employee deferral delinquency as an improper loan to the Employer, which the DOL considers to be a prohibited transaction subject to an excise tax equal to 15% of the lost earnings resulting from the late contribution of the 401(k) deferrals. By way of example, if you are late two consecutive months on your 401(k) deferrals and the lost earnings on the late 401(k) deferrals is $200.00, you would owe an excise tax of 15% or $30.00 ($200.00 x 15% = $30.00). Unfortunately, there is no de minimis rule. In addition, if the prohibited transaction is not corrected an additional tax of 100% of the amount involved may be due to the IRS. **Therefore, it is imperative that you timely remit contributions owed for 401(k) deferrals to the Plan.**

Make-up Lost Earnings. If you submit your Employees' 401(k) deferrals late, the DOL requires that you make up the earnings the Employee lost because of such late contribution (based on interest rates set by the DOL). The DOL also has a calculator you can use (but is not required) to calculate lost earnings. ***https://www.askebsa.dol.gov/VFCPCalculator/WebCalculator.aspx?_ga=2.115478981.2111770417.1599588925-1509758202.1554919856***

Filing IRS Form 5330 to Pay Excise Tax / Consult with your Tax Advisor. If you are late on a 401(k) deferral contribution, you may want to review IRS Form 5330. If you fail to pay the excise tax (using IRS Form 5330), you may be charged penalties and interest in addition to the unpaid excise tax. Please consult with your own Tax Advisor.

Other Option – Self-Correcting by Filing Under Voluntary Fiduciary Correction Program. If you are late in contributing the 401k) deferrals in any month, you have the option of filing under the DOL's Voluntary Fiduciary Correction Program ("VFCP"). A VFCP filing requires sending certain information to the DOL identifying the delinquencies and documenting the correction (including restoration of earnings). We acknowledge that in many

situations, the cost of a VFCP filing will exceed the excise tax. The program gives Employers a way to avoid potentially higher civil penalty assessments by satisfying the program's requirements and voluntarily paying a reduced penalty amount. Amounts paid under the program cannot be paid from the assets of an Employee benefit plan. Instead, the Employer is liable for the applicable penalty amount. For more information refer to ***https://www.irs.gov/retirement-plans/401k-plan-fix-it-guide-you-have-not-timely-deposited-employee-elective-deferrals***.

Make-up Employee Deferrals if Contribution not made / Compliance Test Reveals Late Payments. If you fail to contribute an Employee's 401(k) deferral amount to the Plan and that Employee is no longer working for you, you may be responsible for remitting 401(k) contributions to the Plan even though you already paid the Employee the same amount in wages (yes, a double payment). This can often happen when a compliance test of a prior period discloses an earlier late payment. The same rule could apply if the Employee is still working for you and the Employee does not agree to an adjustment.

The Plan's auditor is required to report late Employee contributions on Schedule G of the Plan's tax form (Annual Report Form 5500).

Please be advised the Trust Fund Office does not provide tax or legal or accounting advice. This material has been prepared for informational purposes only. You are urged to consult with your own tax advisor, accounting advisor or legal counsel regarding the impact of late 401(k) deferrals.