

***DISTRICT COUNCIL 16
NORTHERN CALIFORNIA
HEALTH and WELFARE
TRUST FUND***

***Restated Collection Procedures for
Bargaining Unit Employees***

District Council 16 Northern California Health and Welfare Trust Fund

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**District Council 16 Northern California Journeyman &
Apprentice Training Trust Fund**

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Bay Area Painters and Tapers Trust Funds

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**Northern California Glaziers Architectural Metal and
Glass Workers Trust Funds**

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Northern California Floor Covering Industry Trust Funds

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International Union of Painters and Allied Trades

Approved February 11, 2020

Adopted February 11, 2020

DISTRICT COUNCIL 16 NORTHERN CALIFORNIA HEALTH AND WELFARE TRUST FUND

Restated Collection Procedures

I. GENERAL PROCEDURES ON COLLECTION

- A. Allocation of Funds Received. The District Council 16 Northern California Health and Welfare Trust Fund (“Trust Fund”) will be the recipient Trust Fund to record all Employer payments, including contributions, liquidated damages (“LDs”), interest, attorneys’ fees, costs & audit fees. Those contributions, LDs, and interest collected will be allocated among the participating Trust Funds as provided by the applicable collective bargaining agreements, and attorneys’ fees, costs and audit fees incurred or collected shall be allocated to the Trust Funds incurring them.
- B. Pension Hours Credited. Pension credit shall be provided for employees’ hours reported by the Employer, determined by audit, or by employees’ timecards, paystubs, or other verification of hours worked.
- C. Liquidated Damages. Liquidated damages shall be assessed at the greater of \$150 or 10% of the monthly contribution delinquency or any unpaid portion thereof, not to exceed \$750 per month (inclusive of all accounts), as provided by the DC 16 Health and Welfare Trust Agreement, unless a collective bargaining agreement provides for a higher rate. If this occurs, the higher rate shall apply. If a lawsuit is filed, liquidated damages shall be assessed at the greater of \$150 or 20% of the delinquency.
- Upon Board approval, liquidated damages shall not apply to a late payment due to untimely monthly billing, or billing to wrong address, unless the late payment is due to the failure of the Employer to advise the Trust Funds’ administrator of a change in billing address.
 - Waivers of Liquidated Damages:
 - a. Upon written request, one month in rolling (not calendar) twelve months per Employer (not per account) may be automatically waived by administrator.
 - b. No administrative waiver will be available if Employer has outstanding delinquencies, or has had a waiver within preceding twelve months;

- c. Where multiple months of liquidated damages are assessed, any waiver granted shall apply to earliest month of delinquency. The waiver shall apply to that month only, for all accounts.
 - d. Multiple months of liquidated damages may be waived at the discretion of the Trustees, or the appointed settlement subcommittee, based on prudence in resolving litigation, circumstances of delinquencies, or other basis determined to be in the best interest of the Trust Funds.
 - e. The Administrator shall report all administrative waivers to the Trustees at the next quarterly Board Meeting following the granting of the administrative waiver.
- D. Interest. Simple interest of 5% per annum is assessed on contributions only (and not on liquidated damages) received late or remaining unpaid after the delinquency date. Interest shall accrue from the delinquency date (first date of the month following the date payment was due) until paid.
- E. Attorneys' Fees. Payment of attorneys' fees and costs shall be billed to the Employer on referral to Legal Counsel as follows:
- If a matter is referred to Counsel, and resolved after one contact with the Employer (verbally or by written demand) and/or within ten (10) days of Counsel's initial contact, no attorneys' fees and costs will be billed to the Employer.
 - If a referred matter is not resolved within 10 days after the initial demand, Employer shall pay all attorneys' fees incurred thereafter through resolution. Said fees and costs shall be payable on demand by Counsel.
 - If Counsel is required to pursue the Employer further, or to take any action to obtain payment or reports, including but not limited to reviewing certified payroll, contacting general contractors, providing releases, joint check agreements or status letters, or if a lawsuit is filed against the Employer for unpaid contributions or reports, Employer shall pay all attorneys' fees and costs incurred. This shall also apply to legal fees incurred by Employer's failure to comply with a requested payroll inspection of the Employer's records and/or the failure to pay amounts found due on payroll inspection.
 - The Board of Trustees shall have discretion to waive attorneys' fees and costs incurred if said waiver is in the best interest of the Trust Funds, circumstances warrant, and/or good cause exists.

F. Write Offs

- Any amounts due that are outside the statute of limitations (4 years old or older) and therefore legally not collectible, are to be written off by the Trust Funds' administrator.
- Any amounts due of \$1.00 or less may be written off by the Trust Funds' administrator.
- Any amounts due of \$100 or less may be written off by the Trust Funds' administrator if they are 3 or more years old.
- Any amounts that are \$500 or more and 2-3 years old shall be presented to the subcommittee for write off. This includes any amounts due, regardless of time frame, where the Trust Funds' administrator cannot determine the source of the underpayment.
- For any credits owed that are 3 or more years old, they may be removed from the Employer's account after the Trust Funds' administrator has sent 3 or more letters to the Employer with no response.

II. DEFINITIONS

- A. Contributing Employers: Employers signatory to the Collective Bargaining Agreements (CBAs) with District Council 16 of the IUPAT are obligated thereunder and under these Procedures to make Trust Fund contributions.
- B. Allocation: Incomplete payments shall be allocated to the earliest delinquent month of the Employer, or as otherwise directed by Counsel.
- C. Delinquency Subcommittee: To be appointed by Chairman as needed, with full settlement authority.

III. CONTRIBUTION DELINQUENCIES

- A. Contributions for bargaining unit employees are to be billed at the start of each month, for the prior month's hours.
- B. Payments are "due" on the 15th day of the month following the month in which the hours were worked; and "delinquent" if not received by the end of the month following the month in which the hours were worked.
- C. A "delinquency" is incurred as of the first of the month after the report and contributions were due.
- D. Interest at 5% simple interest per annum is assessed on delinquent contributions starting on the delinquency date and continuing until the amounts due are paid in full.
- E. Any check returned for nonsufficient funds ("NSF") creates a delinquency. NSF checks shall be referred immediately to Counsel. Receipt date of the replacement check is used to assess liquidated damages and interest, pursuant to paragraphs I(C) and (D) above. If an Employer has three (3) checks returned in a twelve (12) consecutive month period, Employer shall be referred to Counsel to discuss with the Board of Trustees. The Board may require the Employer pay future contributions electronically by iRemit.
- F. Delinquencies shall be referred to Counsel upon two (2) months of non-payment or partial-payment, or of one (1) month which is \$10,000 or more as reported, or as estimated pursuant to paragraph III(G) below and/or after two (2) demands sent to Employer with no response.
- G. Unreported contributions, where the Employer fails or refuses to submit missing contribution reports, shall be estimated based on the last report submitted, on the average of the last 3 months reported, or on the average of the last 3 months, whichever is greater.

- H. An Employer who pays late for three (3) or more months in a twelve (12) month consecutive period, and fails to pay LDs and interest owed, shall be referred to Counsel to discuss with the Board of Trustees. The Board may require the Employer pay future contributions electronically by iRemit or to follow any other procedures as designated by the Board.
- I. Failure to pay LDs and/or Interest only shall be billed to the Employer by the administrator. Failure to pay LDs and/or Interest only shall be referred to Counsel upon when the amount due totals \$500.00 or more and the Employer has failed to pay on demand by the Administrator. LDs remain at the greater of \$150.00 or 10% of delinquent contributions. If the amount due totals less than \$500.00, administrator shall continue to add to Employer's monthly billing. Once the total reaches \$500.00, it shall be referred to Counsel.
- J. Non-bargaining unit contributions shall be applied to the Employer's unpaid bargaining unit contributions, if any.

Steps Taken By Administrator

	Time / Event	Action
1.	Upon DC 16 notice of new signatory or PLA Employers ¹ :	<p>Calendar first reporting date due, then confirm receipt of first report; if none, advise DC 16.</p> <p>Notify auditor when Employer has been signatory for 6 months for scheduling of courtesy audit.</p> <p>If Employer is on a PLA, Administrator shall send Employer an initial letter requesting that Employer notify Administrator when project subject to PLA is complete by marking the final contribution report as "FINAL." Initial letter shall state that account inactivation shall be subject to verification by the Union.</p>
2.	For all employers, second business day after determination of delinquency (no payment or NSF payment by end of payment	Delinquency notice and demand sent including LDs, requiring receipt of delinquent amount(s) due within 14 days.
3.	If payment is not received in response to demand:	Second demand sent, notifying Employer that if amounts due are not paid, they will be referred to Counsel for collection. Second demand shall require receipt of delinquent amount(s) due within 7 days.
4.	If amounts due remain unpaid after two (2) demands:	Refer to Counsel showing all delinquent contributions and all LDs and interest due to specified date, including copies of demand letters sent. Unreported months will be estimated based on the last report submitted, on the average of the last 3 months reported, or on the average of the last 3 months, whichever is greater.

¹ Administrator shall request that DC 16 copy Auditor on all new account set up requests for the purpose of Auditor scheduling courtesy audits.

5.	Upon one month's delinquency of \$10,000 or more (reported or estimated); any delinquency for an Employer on a stipulated payment plan; or upon 2 months' delinquency:	Immediately refer to Counsel showing all delinquent contributions and all LDs and interest due to specified date. Unreported months will be estimated based on the last report submitted, on the average of the last 3 months reported, or on the average of the last 3 months, whichever is greater.
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	Time / Event	Action
6.	Upon receipt of any delinquent payments after referral to Counsel:	Notify Counsel immediately by email. If all contributions due are now paid, and no attorney's fees and costs are due, matter referred back to Administrator to send demand letter for any remaining LDs and interest.
7.	Upon Employer's failure to pay LDs and/or interest:	Refer 2 months of unpaid LDs and Interest to Counsel provided the amount due totals \$500.00 or more. If amounts total less than \$500.00, accrue LDs, continue to add to monthly billing, and add to any future delinquency referred to Counsel.
8.	Upon Employer's written request for waiver of liquidated damages:	One delinquent month in 12 can be automatically waived upon written request of Employer. If further waivers requested, present to Board for determination, reporting any prior waiver and relevant circumstances.
9.	Upon Employer's request to close account:	Refer to DC16 to verify and authorize account closing. Advise Counsel and Auditor of any accounts closed which were previously referred for legal action.

	Time / Event	Action
10.	Upon receipt of reported hours without contributions:	<p>In addition to demand/referral requirements above:</p> <p>Advise <u>Pension Plans</u> of hours reported, to be credited based on Employer reports, or by employees' timecards or paystubs, whether or not contributions paid;</p> <p>Advise <u>Defined Contribution Plans</u> of hours reported, and:</p> <p style="padding-left: 40px;"><u>Glaziers'</u> profit sharing Individual Account Retirement Plan credits no hours without payment;</p> <p>Advise <u>Health Fund</u> of hours reported, to be credited based on Employer reports; coverage provided based on hour bank requirements;</p> <p>Advise <u>Vacation Funds</u> of hours reported, credit not processed until contributions received.</p>
11.	Upon failure to report for 2 months when Employer signatory to a Project Labor Agreement (PLA):	Notice to DC 16 for investigation by Local Union. After Union confirms Employer's obligation to contribute, refer to Counsel as set forth above. Also notify Auditor for purpose of Auditor scheduling Exit Audit.
12.	Monthly status report of delinquencies:	Updated and sent to Trustees, District Council 16's Director of Service, and Trust Counsel.

NOTE: *Upon administrator's receipt of delinquent payment or contact from a referred Employer, Counsel to be notified. Once a matter is referred to Counsel, all communications with Employer are to go through Counsel unless otherwise agreed. Administrator is not to send any notices to Employer once a matter is referred, for liquidated damages/interest or otherwise.*

Steps Taken By Attorney

	Time / Event	Action
1.	Upon receipt of referral:	Demand letter sent.
2.	10 days after demand letter, where no response or resolution is forthcoming:	<p>File lawsuit <i>as appropriate</i>, including LDs, interest, fees, costs, amounts found due on audit, audit costs and demand for payroll inspection entry (if necessary /appropriate), and/or take other appropriate action to be determined by circumstances (file proof of claim in bankruptcy, mechanics lien, stop notice, claim on bond, etc.).</p> <p>If no resolution in progress and amount due or as estimated totals \$10,000, or 2 months are delinquent, notify DC 16.</p> <p>Where demand is for LDs and/or Interest only, take no further action and refer matter back to administrator for further handling.</p>
3.	After 48 hour notice issued by DC 16:	Advise DC 16 of any payment or satisfaction or any significant change in circumstance.
4.	Upon request for current status letter and/or Waiver and Release by delinquent Employer:	Where amounts remaining due are <i>de minimus</i> relative to Employer's usual contributions, and accounts are otherwise fully paid, issue current status letter to enable Employer to receive its payment from Generals. For Employers on payment plans, existence of payment plan and status of payments shall be included in letter.

IV. STIPULATED JUDGMENTS REQUIRING PERIODIC PAYMENTS

Steps Taken By Administrator

	Time / Event	Action
1.	Upon determination of delinquent current contributions:	Prompt notice of new delinquency sent to Counsel, with spreadsheet showing all contributions, liquidated damages, and interest due.
2.	Upon receipt of stipulated payment from Employer (<i>i.e.</i> , not from Counsel), NSF payment, or replacement payment:	Notify Counsel by email.

Steps Taken By Attorney

	Time / Event	Action
1.	Upon entry of Stipulated Judgment:	Copy sent to Administrator. Payments made pursuant to the terms of the Stipulated Judgment shall be transmitted with instruction on application of funds.
2.	Upon receipt of notice of current delinquency, or upon default of Employer:	Notice of default is sent to Employer specifying the act (s) of default, along with demand to cure within 7 days. Written notice provided to DC 16 <i>as appropriate</i> based on specifics of default.
3.	Upon receipt of any payments, and/or any resolution being reached with Employer:	Advise DC 16 by email of change in status, or by telephone as appropriate.
4.	If default remains uncured:	Execution commenced on outstanding balance and/or other appropriate action taken, as necessary.

V. DELINQUENCIES AFTER EXPIRATION OF COLLECTIVE BARGAINING AGREEMENT

Steps Taken By Attorney

	Time / Event	Action
1.	Upon receipt of referral:	Demand letter sent.
2.	10 days after demand letter, where no response or resolution is forthcoming:	Contact Union Counsel and/or file unfair labor practice charge with NLRB.

VI. WAIVERS, RELEASES AND STATUS LETTERS

Steps Taken By Administrator

	Time / Event	Action
1.	Upon receipt of Employer's request for status letter, waiver, or release:	<p>Review Employer's status.</p> <p><u>If Employer is current in contributions:</u> Refer Employer's request to Counsel with confirmation of Employer's current status.</p> <p><u>If Employer is not current in contributions:</u> Refer Employer's request and delinquency to Counsel, with a summary of all amounts owed by Employer and notice of any audit pending or in process.</p>

Steps Taken By Attorney

	Time / Event	Action
1.	Upon receipt of request for status letter, Release and/or conditional or unconditional waiver, from Employer or Administrator:	Contact Employer and/or General Contractor to confirm request and obtain proof of hours worked on the project(s) if needed. Request analysis of certified payroll by auditor as needed, for calculation of amounts due. Waiver, release or status letter shall be executed by Counsel once all requested information is adequate to support release/waiver.