



OPERATING ENGINEERS LOCAL UNION No. 3

1620 SOUTH LOOP ROAD, ALAMEDA, CA 94502-7089 • (510) 748-7400 • FAX (510) 748-7436

Jurisdiction: Northern California, Northern Nevada, Utah, Hawaii, and the Mid-Pacific Islands

TO: Zenith Administrators, Inc.

CC: MPSA, Inc., Miller Kaplan Arase LLP, and Saltzman & Johnson Law Corp.

DATE: August 20, 2020

RE: **FRINGE CONTRIBUTIONS FOR PAYMENTS TO EMPLOYEES
RELATED TO COVID**

This instruction applies to all signatory employers in California, Nevada, Utah and Hawaii. It addresses the fringe contributions required as part of COVID-related payments made to employees *not associated* with any hours actually worked, and is broken down into three categories: (1) payments made pursuant to a federal, state or other local ordinance or mandate governing COVID-related leave; (2) voluntary wages, bonus or stipend payments; and (3) payments made with funds under a PPP loan.

1. Mandatory Payments for COVID-Related Leave Required by Law

In the event that an Individual Employer issues any form of wages to a current or former employee per a government ordinance or mandate, e.g. Emergency Paid Sick Leave Act, Emergency Family & Medical Leave Expansion Act, such payments shall not constitute “each hour worked or paid” under the applicable collective bargaining agreement, meaning that corresponding fringe contributions are not required, unless otherwise required under the government ordinance or mandate.

- **It is the understanding of the Parties that “wages” as referenced above, is understood to mean wages including vacation/holiday/sick pay (paid directly to individual employees as part of wages *and not* to the Vacation Fund), up to the applicable daily maximum provided for under FFCRA guidelines. No other forms of wage payment shall apply.**
- **Additionally, the only fringe benefit owed to an employee while receiving FFCRA-related benefits is the Health & Welfare (H&W) fringe at the applicable collective bargaining amount of 120 hours per month, or pro-rated for the period of time the employee was not working and receiving FFCRA-related benefits. (e.g. an employer must only contribute the prorated amount of 60 hours on behalf of an employee on paid FFCRA sick leave for two weeks, and 30 hours on behalf of an employee on paid FFCRA sick leave for one week). (NOTE: Employers with over 500 employees providing wages required under California’s AB 1867, effective September 9, 2020, do not need to pay H&W or any fringes.)**

- **No form of retirement (Pension or Annuity), Vacation Fund, or Pensioned H&W, nor any other fringe benefits obligations shall apply with respect to the “wages” referenced above.**

SUGGESTED DOCUMENTATION FOR TRUST FUND AUDIT COMPLIANCE

Contractors who paid FFCRA-related benefits to employees must substantiate compliance with its requirements and related audit requests by providing at least one (1) or more of the following documents to the Fund Auditor:

- 1) Proof of quarantine order such as a government shelter in place order (or similar order) impacting their specific location, office and/or job site;
- 2) Employee timecards and payroll (or similar document including Certified Payroll Reports) during the period for which the employee is not performing any work;
- 3) Document or other certification reflecting the employee’s request for FFCRA benefit and the factor(s) that made the employee eligible for said benefits;
- 4) Doctor’s note or other order that an employee receive a COVID-19 test, or other directive that an employee quarantine (1) pending the results of a COVID-19 test, or (2) quarantine due to the positive COVID-19 test of the employee, employee’s spouse or child(ren), and/or individual under employee’s care;
- 5) Applications for government assistance (including tax credits) filed with the Small Business Administration or copies of IRS Forms 941 or 7200 showing evidence that the employer continued to retain and pay employees who were not working;
- 6) Other adequate documentation, records and/or information.

2. Bonus or Stipend Payments

In recognition of the current COVID-19 emergency in our industry, effective March 16, 2020, for workers who are unable to work for COVID-19 related reasons (e.g., job shut downs, sickness, self-quarantine, etc.). Individual Employers may voluntarily compensate workers with wages, bonuses or stipends only. No fringe benefit payments shall apply in such cases, provided the worker is not performing covered or non-covered work. This does not apply to payments mandated under the FFCRA, or paid for by a Paycheck Protection Program loan.

- **It is the understanding of the Parties that “wages” as referenced above shall be interpreted to mean any amount of compensation – stipend, bonus, or wages (not under FFCRA or a PPP loan) – provided to employees at the discretion of the Individual Employer for non-working hours related to COVID-19. Neither vacation/holiday/sick, nor any form of wage or fringe as defined in the collective bargaining agreement (CBA)**

shall apply. The compensation contemplated herein can never be paid in lieu of wages and fringes for work actually performed.

SUGGESTED DOCUMENTATION FOR TRUST FUND AUDIT COMPLIANCE

Contractors who paid voluntary wages, bonus or stipend are strongly advised to adhere to these best practices to distinguish such bonus payments from other payments to employees for hours worked or paid which may be requested by the Fund Auditor:

- 1) Use distinct cost, payroll, and accounting codes for bonus payments, e.g. COVID-19;
- 2) Keep detailed payroll records associated with the bonus payment(s);
- 3) Maintain other documentation reflecting and distinguishing that a COVID-related voluntary bonus was paid.

3. Payments Made From Funds Paid by Paycheck Protection Program (PPP) Loans

If PPP Loan proceeds are used to pay employees who are *not actively working*, the signatory contractor shall pay the normal taxable amounts (base wage, Vacation, Holiday and Sick Pay Trust Fund and Supplemental Dues), Health & Welfare, Pensioned Health & Welfare, Pension, Annuity and Vacation/Holiday/Sick Pay Trust Fund Administrative Fee, but the signatory contractor shall not be required to pay the other miscellaneous fringe benefits (Affirmative Action Training Fund, Industry Stabilization Fund, Job Placement Center/Market Area Committee Administrative Fee, Business Development & Marketing Trust and Contract Administration).

- **If the total taxable amount for an individual employee is greater than \$48.08 per hour, the contractor may cap the taxable amount at \$48.08 per hour, in which case the full amount shall be paid for Vacation, Holiday and Sick Pay Trust Fund and Supplemental Dues and the base wage will be reduced to total \$48.08 per hour.**
- **Each contractor will notify the Union and the Local 3 Trust Funds when its 8-week PPP Loan period began and when it ended. Contractors are still obligated to pay full fringes for all hours worked, even if PPP loans are used.**