

HEALTH WAY OF SAN DIEGO COUNTY TRUST FUND

PAYROLL RECORD REVIEW AND DISPUTE RESOLUTION PROCEDURES

PREAMBLE

The Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, requires that the trustees of the Health Way of San Diego County Trust Fund ("trust fund") implement and maintain a reasonable, diligent and systematic procedure to monitor the payment of contributions by participating employers. The trustees are also authorized by the trust agreement establishing the trust fund to review the payroll books and records of participating employers in furtherance of this duty. The procedures set forth below are intended and designed to fulfill the trustees' duty and protect the solvency of the trust fund and the benefit expectations of participating employees.

I. PAYROLL RECORD REVIEW PROCEDURES

A. Maintenance of Payroll Records by Participating Employers. Participating employers must submit contributions to the trust fund on a monthly basis, and must provide names and social security numbers for all participating employees. In addition, participating employers must retain waiver of coverage forms for employees who waive participation in the trust fund. It is the responsibility of a participating employer to maintain complete and accurate records pertaining to this information as required by state and federal law.

B. Trust Fund Access to Payroll Records. The trust fund, through its designated agent, is authorized to examine and review any books and records of account of a participating employer to ensure the accurate reporting and payment of contributions. Upon request, the participating employer will produce all original payroll records, including but not limited to timecards, ledgers, journals, check disbursement records, W-2 and 1099 forms, worker's compensation reports, federal and state income tax reports and any other records which the trust fund or its designated agent consider necessary to accurately determine or verify the amount of contributions owed or paid. Production of these records may be required and the payroll record review conducted at the participating employer's place of business unless otherwise agreed upon.

C. Scope of Payroll Record Review. The payroll record review program will be conducted along the following lines:

1. The trustees, through the trust fund's administrative manager, will supervise the program. The actual payroll record review will be conducted by an accounting firm selected by the trustees.
2. The administrative manager will determine the employers to be reviewed. Each participating employer will be reviewed approximately once every three (3) to five (5) years.
3. The independent accountant will have discretion to review one or more test quarters within the audit period from the date of the last review.

D. Instructional Review Procedures. The trustees have discretion to conduct instructional payroll record reviews for new participating employers. The independent accountant will meet with a new participating employer within a short time after the participation of the employer begins. Instructions regarding the manner and method of reporting and paying contributions will be provided to the employer's staff and relevant trust fund procedures and policies will be reviewed at that time. In the event that delinquent contributions are revealed in the process of the instructional audit, they will be collected according to the procedures set forth below, minus any payroll record review fees, costs, or liquidated damages. Instructional review procedure is to provide an orientation to the participating employer at an early stage of involvement in the trust. It is the goal of the trustees to provide each new participating employer with an instructional audit within twelve (12) months of the commencement of participation.

E. Payroll Record Review Procedures. The following procedures will be implemented:

1. A list of employers whose records are to be reviewed will be prepared by the administrative manager.
2. The administrative manager will notify each participating employer by letter advising that a payroll record review will be conducted.
3. The administrative manager will provide the accountant the following information.
 - a. A copy of the letter notifying the employer of the payroll record review. The full name and address of the employer,

the employer's telephone number, and the identity of the responsible company representative;

b. A copy of the adoption agreement signed by the employer;

c. Copies of the employer's invoices for the period selected by the independent accountant; and

d. Any additional information as may be appropriate.

4. Upon receipt of the foregoing information, the accountant will:

a. Establish a file for each employer to be reviewed;

b. Contact each employer by telephone (with confirming telephone call) concerning the program and the production of the necessary books and records. If the employer resists the review, the accountant will refer the employer to the related provisions of the trust agreement, and if all other means to obtain cooperation fail, the accountant will advise the administrative manager;

c. Upon receiving the employer's cooperation, the accountant will contact the employer's payroll or bookkeeping personnel regarding arrangements for the review;

d. At an appointed time, the accountant will visit the premises of the employer and examine all pertinent payroll records, and make the necessary inquiries to complete the review. The object is to detect systematic errors and correct reporting deficiencies; and

e. As the payroll record review proceeds, the accountant will consult with the administrative manager and attorney concerning any problems which may develop.

5. When the payroll record review is completed, the accountant will prepare the following documents:

a. A listing of each non-reported or incorrectly reported employee by name and social security number;

b. A schedule of amounts due which summarizes the data on the detail sheets and a report which explains the

arrangements under which the review was conducted and describes the nature of the shortages discovered; and

c. The accountant will be compensated for the payroll record review services as approved by the trustees.

6. When the payroll record review reports are complete, they will be furnished to the administrative manager who will provide copies to the employers reviewed.

7. All payroll record review results will be reviewed with the trustees for appropriate follow-up action, if any.

E. Adjustment of Payroll Record Reviews. Any adjustment in the assessment must be approved by the trustees before becoming final. The administrative manager may recommend an adjustment to a payroll record review assessment to the trustees, but he may not bind the trustees to any adjustment.

F. Request for Payment. The employer may be billed for underpayments resulting from the payroll record review. If the reviewed employer fails to remit payment upon being billed, the administrative manager will make reasonable efforts to obtain voluntary compliance from the participating employer. The administrative manager will also attempt to amicably resolve any disputes concerning the amount of the assessment. If the administrative manager is unable to amicably resolve any dispute over the assessment or to obtain voluntary compliance with the demand for payment within forty-five (45) days of the demand, arbitration may be requested. This paragraph will not preclude the administrative manager from initiating arbitration at any time in his discretion.

G. Payment of Fees. If the payroll record review shows a delinquency in excess of ten percent (10%) of the contributions due to the trust fund, the cost of the review will be charged to the participating employer.

H. Calculation of Hours Worked by Employees. In the absence of complete and accurate records relating to the number of hours worked by a participating employee, it will be assumed for the purpose of assessing delinquencies, and in any subsequent arbitration, that the employee worked thirty (30) hours in each work week during which the participating employer was required to pay contributions to the trust fund on the employee's behalf, unless the participating employer produces credible and competent evidence to the contrary.

I. Action to Compel Production of Payroll Records. Any and all disputes regarding the trust fund's right to conduct a review of a participating

employer's books and records as described above will be subject to the dispute resolution procedures set forth below.

II. DISPUTE RESOLUTION PROCEDURES

A. Binding Arbitration of Delinquency and Payroll Record Review Disputes. All disputes concerning an employer's delinquency in the payment of contributions to the trust fund and/or the trust fund's right to conduct payroll record reviews will be submitted to mandatory arbitration which will be final and binding upon the parties. This provision will not impose any duty on the trustees to arbitrate any other dispute. The arbitrator will have full and complete authority to decide all questions arising out of or concerning any such dispute including procedural and substantive arbitrability issues, except:

1. The arbitrator is not empowered to vary the terms of the trust or subscription agreement; and
2. The arbitrator must award interest and liquidated damages as provided under the trust agreement if delinquencies are found.

B. Arbitration Rules. Arbitration hearings will be held in San Diego, California in accordance with the labor and arbitration rules of the American Arbitration Association, as they are modified by the terms of Section D., *infra*.

C. Initiation of Arbitration Proceedings. Arbitration will be initiated by written request by the participating employer or by the administrative manager that any dispute be submitted to arbitration.

D. Conduct of Arbitration Hearing.

1. The arbitrator will keep minutes of the proceedings. The trust fund will be represented by the administrative manager or other designated representative. The participating employer may choose its own representative. There will be no attorneys, court reporters, or recording devices of any type or nature at the hearing.
2. The arbitrator will have the power to hear and decide the dispute *ex parte* so long as notice of the arbitration hearing is given to the participating employer in accordance with the notice provisions as set forth above. The arbitrator's *ex parte* award will be final and binding upon the participating employer and the trust fund.
3. The arbitrator will render a decision in writing. Such decision will be rendered within thirty (30) days of the conclusion of the hearing unless an extension is granted by the trustees.

4. Any party to the arbitration will have the right to appear, present oral and documentary evidence, and to examine witnesses.

5. The arbitrator will have the right to issue subpoenas duces tecum and ad testificandum. Requests for subpoenas will be made in writing within ten (10) days prior to the hearing. Subpoenas issued will be served in compliance with Cal. Civ. Proc. Code § 1282.6(c), except that service of a subpoena duces tecum directed to the production of records in the possession, custody or control of a party to the arbitration will be effective when mailed to that party at its last known mailing address by certified mail. Each party will bear the costs of any service or witness fees.

E. Actions to Vacate or Confirm Arbitration Awards.

1. No party to the arbitration will seek to vacate the arbitral award except on the following grounds:

a. The award was procured by corruption, fraud, or undue means;

b. There was evident partiality or corruption in the arbitrator;

c. The arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;

d. The arbitrator exceeded his powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made; or

e. Any other ground permitted by law.

2. In any action to vacate an arbitral award, the prevailing party will recover its costs and attorneys' fees incurred in the action to vacate, in addition to any other relief granted.

3. If the trust fund must sue to confirm an arbitral award in its favor, the trust fund will recover costs and attorneys' fees incurred in prosecuting the action to confirm the award, in addition to any other relief awarded in its favor.

4. All actions to confirm or vacate an arbitral award will be brought in the federal or state court of competent jurisdiction in the county or district in which the trust fund maintains its administrative office.

F. Basis for Calculating Arbitration Award. If an award is rendered in favor of the trust fund by an arbitrator or court, the arbitrator and/or the court will award the trust fund the unpaid contributions, interest by using the rate provided under the plan computed as of the date the contributions were due until paid, and liquidated damages at the rate often percent (10%) of the amount owed.

G. Preservation of Trust Fund's Legal Remedies. These dispute resolution procedures will not limit the right or duty of the trustees to initiate legal proceedings when, in their discretion, such proceedings are necessary in order to preserve the assets of the trust fund or to protect the benefit expectations of participating employees.

Adopted this 18th day of November, 2004.

HEALTH WAY OF SAN DIEGO COUNTY
TRUST FUND

By: Barbara A. Alderson
Barbara Alderson, Chairperson

By: Donald V. Tartre
Donald V. Tartre, Secretary