

OPERATING ENGINEERS TRUST FUNDS

I.U.O.E. LOCAL 12 HEALTH & WELFARE / PENSION / VACATION / DCP

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To: Signatory Employers

Re: Contributions to Health and Welfare Fund under new Families First Coronavirus Response Act

Date: April 13, 2020

On April 1, 2020, the “Families First Coronavirus Response Act” (FFCRA) became effective. Pursuant to the FFCRA, some signatory employers will be required to make contributions to the Health and Welfare Fund in connection with the paid sick leave and expanded FMLA leave provided to certain employees relating to the Covid-19 pandemic. The law is new and the Department of Labor is issuing guidance on their web page at www.dol.gov/newsroom/releases/whd/whd20200401.

The law requires certain employers to pay Health and Welfare Fund contributions for up to 80 hours in connection with the paid sick leave provided, and requires certain employers to continue to pay contributions to the Health and Welfare Fund during the expanded FMLA leave so as to maintain the same level of coverage and benefits without requiring the employees to use “banked hours.” The employers will be entitled to offset these payments from their payroll taxes, and will be required to keep documents to prove the contributions and the payroll tax offset.

The Trust Funds are aware that the contributions to the Health and Welfare Fund will be made by those employers pursuant to the FFCRA, and that contributions will not be paid related to those same hours to the other Trust Funds that normally receive contributions under the collective bargaining agreements. When such an employer is audited by the Trusts, the Trust auditor will require documents from the employer that confirm that these Health and Welfare contributions were made under the FFCRA. Provided the contributions were made pursuant to the FFCRA, the Trust Funds will not make a claim for contributions by the other Trust Funds related to the paid sick leave and expanded FMLA leave.

The Trust Funds cannot provide legal advice to employers about whether they are required to make these payments or how to claim the offsets from the payroll taxes. Those decisions can only be made by the employers in conjunction with their own legal advisors.

Operating Engineers Trust Funds

OPERATING ENGINEERS TRUST FUNDS – LOCAL 12
Families First Coronavirus Response Act
Contributions to Health & Welfare Fund

QUESTIONS AND ANSWERS – PAID SICK LEAVE/EXPANDED FMLA

- 1. Q: Do I have to pay contributions for Paid Sick Leave/Expanded FMLA paid to my employees?**
A: Yes, send an email to Felicia Alcaarez at FAlcaarez@oefi.org indicating you have Paid Sick Leave/Expanded FMLA hours to report. Felicia will give you guidance on how those hours will be remitted to the Trust Fund.
- 2. Q: Do I have to pay full fringe benefit contributions for Paid Sick Leave/Expanded FMLA?**
A: If paying Paid Sick Leave/Expanded FMLA to an employee, only H&W contributions will be due.
- 3. Q: I report through the portal, there is no option for me to only pay H&W contributions for my employees that were Paid Sick Leave/Expanded FMLA?**
A: You must contact Felicia Alcaarez at FAlcaarez@oefi.org, she will give you access to an additional remittance, it will only include H&W contributions.
- 4. Q: I did not receive a paper employer report form for me to only pay H&W contributions for my employees that were Paid Sick Leave/Expanded FMLA?**
A: If you are one of the few employers that continues to receive paper report forms, right now is a good opportunity to switch to the portal. Contact Felicia Alcaarez at FAlcaarez@oefi.org for assistance on switching to the portal or to receive a H&W contribution only employer report form. The first employer report form will be emailed to you, subsequent employer report forms will be mailed.
- 5. Q: I have multiple agreements that required different H&W contribution rates, how will I report these?**
A: You must continue to report your employees under the correct H&W contribution rate.
- 6. Q: How will the Operating Engineers Trust Fund Compliance Auditor know full fringe benefit contributions were not due for my employees when on Paid Sick Leave/Expanded FMLA?**
A: It is advisable these hours are paid utilizing a distinct payroll code, different than what is used for paying hours worked or paid (REG/OT/DT/OTHER). The employer will be required to provide relevant records pertaining to employees on Paid Sick Leave/Expanded FMLA.

FIXED RATE H&W

- 7. Q: If my employee works part of the month and is on Paid Sick Leave/Expanded FMLA the remainder of the month, do I pro-rate the Flat Rate?**
A: No, the full H&W Flat Rate will be due.
- 8. Q: What if I report both Hourly or Flat Rate, based on the hours worked/paid?**
A: Worked/Paid and Paid Sick Leave/Expanded FMLA hours must be combined to determine if the Hourly Rate or Flat Rate will apply, also contact Felicia Alcaarez at FAlcaarez@oefi.org for further guidance.