

SOUTHERN CALIFORNIA PIPE TRADES ADMINISTRATIVE CORPORATION

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IMPORTANT REMINDER to employers regarding Southern California Pipe Trades Defined Contribution Fund 401(k) Deferrals

Employers who fail to send 401(k) contributions (deferrals) to the Defined Contribution Fund by the deadline set under Department of Labor (DOL) and Internal Revenue Service (IRS) regulations face substantial penalties.

These regulations require that employers transmit a 401(k) deferral to the Defined Contribution Fund at the earliest date the employer can reasonably segregate the contribution from its general assets, but in no case later than 15 days after the end of the month in which the contribution was withheld from the employee's paycheck.

Many employers have interpreted this rule to mean that so long as they send the contribution by the 15th of the month after the month the contribution was withheld (which also happens to be the latest date contributions to all the Southern California Pipe Trades trusts may be sent according to the collective bargaining agreements) then they have satisfied the DOL and IRS requirements. *This is not the case.* If the employer can reasonably segregate the contribution from its general assets earlier than the 15th day of the following month, then it is required to send the deferral earlier.

Many practitioners recommend that deferrals be transmitted to the Fund no later than two days after the date the deferral was withheld from pay.

If the employer fails to meet this requirement, in other words, if the employer holds on to a 401(k) contribution longer than necessary, *the employer must pay a 15% excise tax on the amount of late contributions each year until the delinquency is repaired*, which means that (1) the contribution must be made *and* (2) *any earnings lost due to the late contribution must be calculated and paid by the employer to the Participant's account.*

The Fund must file an IRS Form 5500 each year. That form requires the reporting of the amounts of contributions that employers deposited late. Because we cannot know when any particular employer could have segregated a contribution from its general assets, we use the 15th day of the month after the month of deferral as the basis for reporting late employers on the Form 5500. However, if the DOL or the IRS examines the employer's records, they may decide that an employer's particular due date was earlier than that and then impose penalties.

We provide all employers with report forms that permit you to report 401(k) deferrals as often as you like. We encourage you to transmit 401(k) deferrals in accordance with the regulations. Please feel free to contact the Contractor Compliance Department should you have any questions.