



LOCAL



***Welfare, Pension, Annuity, Job Training, Vacation & Sick Leave Trust Funds***

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January 11, 2012

Re: Revised Special Rules For Withdrawal Liability For Employers  
In The Building And Construction Industry

Dear Local 282 Fund Contributing Employer:

Please find enclosed a copy of the Special Rules For Withdrawal Liability For Employers In The Building And Construction Industry, adopted by Board of Trustees on December 8, 2011. The rules were previously sent to you, prior to the revisions, following their adoption by the Trustees on September 27, 2011.

Thank you

Thomas J. Ryan  
Fund Administrator

**LOCAL 282 PENSION TRUST FUND**  
**SPECIAL RULES FOR WITHDRAWAL LIABILITY FOR EMPLOYERS IN THE**  
**BUILDING AND CONSTRUCTION INDUSTRY**

**I. Introduction**

1. These special rules for withdrawal liability for employers in the building and construction industry, as defined herein, (the “Rules”) for the Local 282 Pension Trust Fund (the “Fund”) are hereby adopted by the Trustees of the Fund (the “Trustees”) to supplement the provisions of the Restated Agreement and Declaration of Trust of the Local 282 Pension Trust Fund (the “Trust Agreement”) related to withdrawal liability, and they shall have the same force and effect as such provisions.

2. These Rules shall be effective with respect to employers that withdraw on and after January 1, 2012 that have made contributions to the Fund within the previous six months.

3. These Rules are intended to ensure that the Fund complies with applicable law and are adopted in the absence of statutory or regulatory guidance regarding the scope of the special rules applicable to withdrawal liability for employers in the “building and construction industry” under the Employee Retirement Income Security Act of 1974, as amended. These Rules conform the Fund’s practice to that of other similar Teamster and other construction industry pension plans.

4. In adopting these Rules, the Trustees are acting solely in the interests of the Fund’s participants and beneficiaries, to help protect the financial stability of the Fund, and to help ensure that the Fund maintains a stable base of contributing Employers. Among other problems facing contributing Employers, which threaten the contribution base of the Fund, is that Employers have increasingly encountered problems in obtaining bonds or other security to perform work on public construction projects because of the required disclosure of the Fund’s withdrawal liability. As a result, these Employers have been unable to secure the required bonds and have lost work to non-union companies. These hardships and others jeopardize the Fund’s contribution base.

5. The Trustees have determined that the cessation of the obligation to contribute by an Employer in the building and construction industry, as defined herein, does not normally weaken the Fund’s contribution base, unless the Employer continues to perform work in the same jurisdiction for which contributions were previously due.

6. It is the intention of the Trustees that these Rules apply solely to the Fund’s calculation, assessment, and collection of withdrawal liability, and apply solely to the Fund and its contributing Employers and withdrawn Employers, for withdrawals on and after January 1, 2012. The Rules are not intended to have any effect whatsoever on any other parties, including but not limited to Building Material Teamsters Local 282 (the “Union”), nor to be used or referenced in any way, in any proceeding, except in a proceeding or negotiation involving the Fund and a contributing or withdrawn Employer regarding the calculation, assessment, and/or collection of withdrawal liability.

7. The Trustees, or their delegate, reserve the right, in their sole discretion, to determine whether the Employer has withdrawn from the Fund in a complete or partial withdrawal, and whether to assess and to collect any resultant withdrawal liability.

8. The Trustees, or their delegate, reserve the right to request any information from the Employer and to seek information from any other source, as well as to amend their determination with respect to an Employer's operations based on additional information or changed circumstances, including changes in the nature of the Employer's work. To the extent an Employer has submitted information to the Trustees regarding its operations, it shall within 30 days submit supplemental responses if it obtains further relevant information or if any of the information changes.

9. In the case of an Employer that fails to provide any or all of the information it is required to provide to the Fund or that is specifically requested by the Trustees in connection with the determination of an Employer's actual or potential withdrawal liability, the Trustees or their delegate may, in their sole and absolute discretion, determine that the Employer does not satisfy the conditions for the special rules for building and construction industry employers described herein, notwithstanding any claim by the Employer to the contrary, or other information it has submitted. Information that the Trustees may request and that the Employer must provide includes, but is not limited to, information regarding the nature of the Employer's operations and the work performed by its employees, including operations and employees other than those for whom contributions are required to be made to the Fund, and work that the Employer performs through subcontractor(s), Fund remittance reports, and records necessary to complete a payroll audit covering any period relevant to any actual or potential assessment of withdrawal liability. The Trustees reserve their right to revisit the issue of an Employer's withdrawal liability if it is determined that the Employer, in providing information for the withdrawal liability determination, provided materially misleading or fraudulent, or otherwise false information to the Trustees.

10. The Trustees may charge an Employer the costs of a determination whether the Employer satisfies the conditions for the special rules for building and construction industry employers described herein if the Employer requests such a determination before the Employer's contribution obligation has ceased.

## **II. Withdrawal of Building and Construction Industry Employers**

1. If, for the five-year period immediately prior to the Employer's complete or partial cessation of the obligation to contribute (or in the case of a possible partial withdrawal based on a 70% decline in contribution base units, the eight-year period used to make that determination), substantially all of the employees with respect to whom an Employer had an obligation to contribute to the Fund performed substantially all of their work (based on hours for which contributions were required to be paid) in the building and construction industry, a complete withdrawal of the Employer occurs only as described in paragraph 3 below, and a partial withdrawal only as described in paragraph 4 below.

2. For purposes of these Rules, the following definitions apply:

- (a) The “Employer” shall mean the signatory, and, in addition to all persons and entities otherwise included under the Trust Agreement or applicable law, all persons and entities that are part of a group of trades or businesses “under common control,” as that term is used in 29 U.S.C. §1301(b)(1) for withdrawal liability purposes; and all persons and entities operating under another name or in a different business form, but with the same or related owners and/or managers. Work that such entity or the signatory performs through subcontractor(s) shall be attributed to the Employer; provided, however, that contributions made by the subcontractor shall not be included in calculating the Employer’s contribution history for purposes of calculating the Employer’s withdrawal liability, if any.
- (b) A “construction site” is the physical place(s) where a structure is being erected and will remain, or is being demolished, or where structures are altered or remodeled, or where installation or infrastructure work takes place. The “construction site” also includes any other site where such activity takes place and which is established specifically for that project, other than the Employer’s permanent site of operations, and also includes job headquarters, tool yards, batch plants, borrow pits, etc., that are dedicated exclusively, or nearly so, to such activity, and are adjacent or virtually adjacent to the site of the actual activity. A “construction site” does not include the site of limited renovation of a private home, where there is no general contractor in charge of the site and the renovation.
- (c) “Work in the building and construction industry” shall include, but not be limited to:
  - (i) Performing, on a construction site, work that involves the erection, demolition, or remodeling of a structure, or infrastructure work, including the work of on-site stewards;
  - (ii) Delivering or removing construction equipment or construction material, including but not limited to ready-mix concrete, to or from a construction site, including dispatching on a construction site.
  - (iii) Transporting any construction material on a construction site.
- (d) The term “substantially all” shall mean 85% or more.
- (e) As an example, an employee who, throughout the year, performs work on high-rise construction sites for half his time and at private homes for which there are no general contractors in charge of the

private home sites for the other half of his time, does not perform “work in the building and construction industry” under these Rules because private homes are not construction sites (see definition above). However, an employee who, for each of the past five years, spent 1,500 hours performing work in the building and construction industry for which contributions were required to be made to the Fund and 200 hours performing other work, will have spent substantially all (88%) of his time performing work in the building and construction industry. Similarly, an employee who works exclusively as a dispatcher from the Employer’s permanent batch plant also does not perform “work in the building and construction industry,” because the Employer’s permanent batch plant is not a construction site. On the other hand, an employee who works as a dispatcher at a yard set up specifically for a single construction project, which is not the Employer’s permanent batch plant, does perform work at a construction site.

- (f) The phrase “work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required” shall mean any type of work covered by any Union collective bargaining agreement with any Employer.

3. A complete withdrawal occurs under this paragraph if—

- (a) The Employer ceases to have an obligation to contribute to the Fund, and
- (b) The Employer, either
  - (i) continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or
  - (ii) resumes such work within 5 Plan Years after the date on which the obligation to contribute to the Fund ceases, and does not renew the obligation at the time of the resumption. Notwithstanding the foregoing, if the Fund is terminated by mass withdrawal (within the meaning of 29 U.S.C. §1341A(a)(2)), this paragraph shall be applied by substituting “3 Plan Years” for “5 Plan Years.”

4. A partial withdrawal occurs under this paragraph if the Employer’s obligation to contribute to the Fund continues for less than an insubstantial portion of its continuing work in the Union’s jurisdiction.