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NEBF
National Electrical Benefit Fund

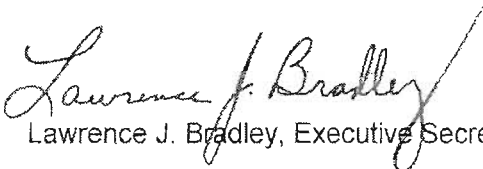


Lawrence J. Bradley
EXECUTIVE SECRETARY-TREASURER

MEMORANDUM

December 29, 2011

TO: All NECA Chapters
All IBEW Local Unions
All Signatory Employers

FROM: 
Lawrence J. Bradley, Executive Secretary-Treasurer

SUBJECT: Gross Labor Payroll and Per Diem Expenses

It has been a long time since the National Electrical Benefit Fund (NEBF) has issued updated guidance on the definition of gross labor payroll as per the Plan's Restated Employees Benefit Agreement and Trust. Additionally, there has been a fair amount of administrative turnover in the contractors' shops, NECA Chapters and IBEW Local Unions since our last notification. We have also been asked by NECA Chapters, IBEW Local Unions, third party administrators, auditors and contributing employers to reissue this definition. Finally, based on our audit findings we can ascertain that there are varying degrees of confusion regarding the NEBF definition of gross labor payroll in different parts of the country.

In an effort to respond to these issues, as well as provide clarity to all parties, we are reissuing the NEBF definition of gross labor payroll which is attached.

Should you have any questions regarding this notice, please feel free to contact the NEBF office at 301-556-4304.

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If you are an employer with multiple locations that administer payroll, please forward a copy of this memorandum to those locations.

cc: D. R. Borden, Jr., NEBF Trustee
Salvatore J. Chilia, NEBF Trustee
National Employees Benefit Board
IBEW International Vice Presidents
NECA Executive Directors and Field Representatives



CONTRIBUTION OBLIGATION - 3% OF GROSS LABOR PAYROLL

The current contribution obligation for NEBF covered employers is 3% of "Gross Labor Payroll." Gross Labor Payroll for NEBF purposes is defined by the NEBF's Restated Employees Benefit Agreement and Trust as ***all wages and other compensation paid to or accrued by employees in the IBEW bargaining unit for services performed for the employer.*** By intent and in practice this concept has broad reach. Accordingly, whenever there is any question about NEBF contributions being due on any type of wages or other compensation paid to or accrued by the employees, it is to be resolved in favor of inclusion in Gross Labor Payroll. [Please note that the scope of Gross Labor Payroll for NEBF purposes may not be altered in a local agreement by an IBEW Local Union and/or NECA Chapter or individual employer, and any interpretation of Gross Labor Payroll that conflicts with the interpretation of the NEBF Trustees is not binding on the NEBF.] Following is a discussion of (1) the three recognized exclusions from Gross Labor Payroll, (2) the treatment of per diem payments as includable in Gross Labor Payroll, and (3) some additional guidelines for calculating Gross Labor Payroll.

EXCLUSIONS FROM GROSS LABOR PAYROLL

When calculating the NEBF contribution obligation, only the following three (3) categories of Gross Labor Payroll may be excluded:

1. **The Value of Non-Cash Fringe Benefits** – Examples of non-cash fringe benefits include the personal use of a company motor vehicle or cell phone; and group term life insurance in excess of \$50,000. Paid vacations, paid holidays, and paid sick days, on the other hand, are "cash" fringe benefits and may not be excluded from Gross Labor Payroll.
2. **Bona Fide Contributions to Employee Benefit Funds** – Contributions made by the employer to: (1) a trust fund established under Section 302(c) of the Taft-Hartley Act; or (2) a separate entity or fund which provides retirement benefits or medical benefits may be excluded from Gross Labor Payroll. With regard to vacation or holiday pay, the NEBF requires that such pay be included in Gross Labor Payroll, unless such benefits are provided via a Taft-Hartley trust fund to which the employer contributes. Similarly, taxable amounts paid by an employer that are deposited into an employee's personal fund are considered Gross Labor Payroll for NEBF purposes.
3. **Extraordinary Bonuses** – Bonuses, whether or not expressly set forth in the labor agreement, are considered Gross Labor Payroll unless they are bona fide bonuses of an "extraordinary" nature. Extraordinary bonuses are ones that are truly extraordinary, i.e., lump-sum bonuses, or other bonuses that are not ordinarily paid as part of a regular payroll period. Examples of extraordinary, lump-sum bonuses are Christmas or year-end bonuses, and end-of-job bonuses. Bonuses that are routine or are made on a regular and predetermined basis are

not extraordinary, and may not be excluded from Gross Labor Payroll. An example of bonuses that are not excludable because they are routine and made on a predetermined basis are periodic safety bonuses.

TREATMENT OF PER DIEM PAYMENTS AS GROSS LABOR PAYROLL

Employers in the electrical industry handle per diem payments in many different ways. Some employers ensure that per diem payments are not included in an employee's gross wages by documenting that the payments are used for proper expenses, while others include the payments in gross wages to avoid the recordkeeping requirements. Similarly, some per diem expenses may be set forth in the collective bargaining agreement while other agreements may be silent on this issue. These differing treatments of per diem payments have also led to differing practices concerning NEBF contributions. This Memorandum is intended to clarify how per diem payments are to be treated for NEBF contribution purposes.

- If the collective bargaining agreement provides for a specified per diem amount, the NEBF will not require contributions on the amount paid up to that specified amount. However, employers are advised that even though the NEBF will not count these payments as part of the Gross Labor Payroll calculation, the IRS may consider part or all of such payments to be wages. Please consult a qualified tax advisor.
- If an employer follows IRS per diem payment guidelines and recordkeeping requirements and does not report per diem payments as gross pay to the employee, the NEBF will not require contributions on those payments.
- If an employer chooses not to follow the IRS rules and reports per diem payments as gross pay to the employee, the NEBF will require contributions on those payments unless the employer can demonstrate to the satisfaction of the NEBF that the payments are made for actual and reasonable business expenses. As one example, the employer's proof might consist of documents showing that the payment falls within the IRS guidelines: the employee traveled for business purposes away from his or her tax home overnight, and the per diem payment falls within the IRS limit for the location of the travel. Alternatively, the employer's proof might consist of documents showing that the employer reimburses employee business expenses under an "accountable plan". If an employer cannot support that its per diem payments are for actual and reasonable business expenses, contributions on those payments are required.

ADDITIONAL GUIDELINES FOR CALCULATING GROSS LABOR PAYROLL

- Gross Labor Payroll for NEBF purposes may differ from the wages or hours upon which the contribution obligation for local funds may be based. NEBF contributions must be made in accordance with the NEBF's rules regardless of whether local fund contributions and NEBF contributions are reported on the same payroll report.

- The contribution obligation for NEBF purposes attaches to *all* of the Gross Labor Payroll paid to or accrued by covered employees (less the exceptions discussed above) regardless of whether the covered employee performed non-covered work in addition to, or instead of, work delineated by the labor agreement. For example, if an employer hires a journeyman electrician and the journeyman spends a portion of the work week performing administrative tasks or other non-covered work, the employer is required to contribute on all of the Gross Labor Payroll paid to this individual, and may not exclude from the Gross Labor Payroll calculation the wages paid in connection with the administrative work.
- Amounts for which an employee is directly reimbursed by the employer do not need to be included in Gross Labor Payroll, so long as the amounts shown by the employer are for reasonable and actually incurred expenses.
- The NEBF Trustees, in their sole discretion, may require an employer to contribute on payroll items that the Trustees have reason to believe are a subterfuge to avoid the basic contribution obligation.

Should you have any questions regarding the above, please feel free to contact the NEBF office at 301-556-4304.

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REMINDER - *The required monthly contribution to the NEBF becomes a debt due and owing the NEBF on the last day of each month, and must be submitted to the Local Collection Agent (with corresponding payroll reports) by the 15th of the following month. If not paid, interest at the rate of 10% per annum, compounded monthly, will be assessed commencing with date on which the contributions became a debt due and owing.*

December 29, 2011