

## **Sample H&W Contract Language**

- Sample language in **Black**
- Notes in **Red**

The Employer shall contribute to the Central States, Southeast and Southwest Areas Health & Welfare Fund for each individual who has performed work covered under this agreement for 30 calendar days. Effective (  Date  ), the Employer shall contribute the sum of (  Contribution Amount  ) per (  Week/Hour\*  ) for each individual. Effective (  2<sup>nd</sup> Year Date  ), the Employer shall contribute the sum of (  Contribution Amount  ) per (  Week/Hour\*  ) for each individual. Effective (  3<sup>rd</sup> Year Date  ), the Employer shall contribute the sum of (  Contribution Amount  ) per (  Week/Hour\*  ) for each individual.

We prefer that the language state when “contributions begin” rather than when “eligibility begins,” as individuals may not work regularly. The Fund focuses on when the contributions begin so that we are collecting properly and according to the parties’ negotiated contract.

Contributions shall be paid for each contribution period an individual is entitled to receive compensation, including but not limited to show-up pay, overtime pay, holiday pay, lay-off pay, vacation pay, or back pay. In addition, if an individual is receiving no wages due to an absence caused by an illness or off-the-job injury, the Employer shall continue to pay contributions for a period of \_\_\_\_\_ weeks. If an individual is receiving no compensation due to an absence caused by an on-the-job injury, the Employer shall continue to pay contributions until such time as the individual returns to work; however, such contributions shall not be paid for a period of more than \_\_\_\_\_ weeks.

If the individual is responsible for a portion of the contribution amount, the individual may reimburse the Employer for their portion of the contribution amount through payroll deductions or other means; however, the agreement must state:

The Employer agrees to bear the responsibility for the full health contribution regardless of whether the Employer can collect co-pays from individuals.

\*The portion of the health contribution that the individual has deducted through payroll deductions can be on a pre-tax basis.

\*And under the Affordable Care Act (“ACA”), the Employer cannot reduce their portion of the health contribution by more than 5% from what they were paying in dollars as of March 23, 2010.

Options:

- A. Health contributions shall be made on each individual performing work covered by this agreement including part-time, temporary, extra, casual, and seasonal individuals.

OR

- B. (available if and only if the collective bargaining agreement historically excluded non-regular or part-time individuals from participation in the Health & Welfare Fund) Health Contributions shall not be owed on part-time, casual, seasonal, extra, temporary individuals (select the appropriate designation [s]) except contributions will be owed on these individuals for any week in which they work 30 hours or more after they have performed work covered by the agreement for thirty (30) calendar days.

Temp Agency Concerns: Because the actual Employer likely is telling the temp agency employees when to show up, and what to work on, and checking the quality of their work, and deciding whether to call the temp agency employee back to work the following day, the Fund sees these temp agency employees as employees of the participating company. Therefore, regardless of whether they are being paid by the temp agency, the Fund may require health & welfare contributions be remitted on their behalf no later than after they have performed work for the participating employer for 30 calendar days. The Fund will need to know the extent of their use.

If an agreement calls for contributions on each individual on the seniority list or for each non-probationary employee, then the Fund will look to the Probationary Article/Seniority Article and use that as the waiting period. However, if the agreement states for each employee, then the Fund will not look to the Probationary Article/Seniority Article for a waiting period. It could then be read that the Employer is required to pay contributions from the first day of work. So make sure that the language in the agreement matches the intent of the parties to eliminate any potential issues.

As you know, the Fund often quotes rates for a max of 3 years. Year 1 is always a specific rate, and years 2 and 3 are often "not-to-exceed" rates. Not to exceed means that the rate will not be more, but could be less than the Not-to-exceed rate that was quoted. If the agreement does not include the "not-to-exceed" language, the Fund will be forced to bill the specific rate without a possibility for reduction. So if a rate is quoted as "not-to-exceed, please remember to add the "not-to-exceed" language to the body of the agreement if the parties want the potentially reduced rates. If the agreement has the not-to-exceed language, then the Fund will inform the Local and/or Employer of the specific rate only after it is set by the Trustees.