



# SUMMER

OUR 49TH YEAR

CONTRA COSTA CHAPTER

OCTOBER 2012

## Surviving a Trust Fund Audit Surviving a Trust Fund Audit

From time to time, your firm will be selected for a random payroll audit by the Trust Funds you contribute to on behalf of your bargaining unit employees. This is true for employers under both Inside and Sound and Communication NECA-IBEW agreements as well as any other crafts you may employ under collective bargaining agreements. The first time an employer receives a notice from the auditing firm, many take this as a personal affront, thinking that someone must have an ax to grind with the company. Since this is an understandable reaction, we wanted to take this opportunity to make you aware of why these audits take place, what the auditors are looking for and what you can do to make sure you don't create any unnecessary problems for yourself. We want you to get the auditors in and out as quickly as possible so that you can get back to doing what you do best. But first, some history on why this happens in the first place.

When Studebaker closed its plant in Indiana in 1963, it terminated its pension plan with the United Auto Workers. A large portion of their workforce, people in the 40-59 age group with an average of 23 years in the pension plan, received 15 cents for every dollar they had in vested benefits. That started a national conversation on retirement plans. In September of 1972, NBC Television aired a program called *Pensions: The Broken Promise* that conveyed how some pension plans had vesting requirements that were truly unfair to workers and how poorly funded plans were unable to pay promised benefits. As a high school senior, I remember my parents reaction to the program and all the difficult questions my mom had for my dad. (Network television documentary's were more powerful at that time because cable TV had not yet come to be.) A short time later, in 1974 congress passed the Employee Retirement Income Security Act or ERISA, which now governs not only pension plans, but also health plans and apprenticeship programs.

ERISA imposes a fiduciary standard on plan Trustees that mandates they act "solely in the interest of participants and beneficiaries" and provides for personal liability to the individual Trustees if they are found to have breached any portion of the standard. So even though there is equal representation by management and labor Trustees, the employer concerns really do not factor into the decision making process at the Trust level. (I cannot think of any other experience in the business world where this is the case.) One of the key provisions of ERISA is that Trustees make reasonable, *systematic*, and diligent efforts to collect employer contributions.

Based on advice from the Department of Labor, the governmental entity that enforces ERISA, many fringe benefit plans began conducting payroll audits of their employers to insure the employers were self-reporting their obligations correctly. Some employers resisted. In June of 1985, the U.S. Supreme Court found that employers must comply in [Central States Pension Fund vs. Central Transportation](#). The U.S. Department of Labor has subsequently held that it will not accept an employee benefit plan's annual tax return (Form 5500) if the Form and the annual audit (which accompanies the Form) reflect that there is no provision for payroll audits of employers. That means that the Pension and Health Care Plans are REQUIRED under law to have a payroll audit program.

### Warning Signs That a Problem May Exist



- Payment of minimum hours
- No overtime paid
- Gaps in payments to key employees
- Late contributions
- Change in person submitting reports
- Frequent participant complaints
- Large fluctuation of hours
- Difficulty scheduling the audit
- Insistence that audit take place at accountant's office

We understand why our employers feel that audits are intrusive and move away from a “presumption of innocence” in an environment where nobody has even accused you of doing something wrong. Couple that with the fact that we have a defined contribution pension plan (with immediate vesting) and we provide the electricians a monthly statement showing your/their contributions. Regardless, the plan has an obligation to conduct the audits, and you have the obligation to comply. The good news is because of the checks and balances we have in place, it is a rare occurrence that an audit of one of our employers picks up any significant discrepancy.

For the past ten years, the Trustees of our fringe benefit plans in Contra Costa County have hired the firm of Miller, Kaplan, Arase & Company to conduct the random payroll audits. You should expect to be audited roughly once in a three to five year period, although that will vary somewhat by the size of the employer. While they do spot clerical errors that inevitably occur in any organization, they are primarily looking for systematic errors. We have attached an example [initial request letter](#) that Miller, Kaplan, Arase & Company sends to our employers requesting the documents they need to conduct the audit. We have also attached a series of [questions and answers on payroll audits](#) that you will find useful reading before the auditor arrives for examination of your records. In order for the auditor to judge whether the remittance reports are an accurate representation of the hours worked for employees covered by the collective bargaining agreement, access to more than just payroll records is needed. They will be comparing your remittance reports with what you reported to the government, your workers compensation carrier, etc. They will also want to know why certain (non-bargaining) individuals do not appear on the remittance reports but appear on the Quarterly Tax returns.

Below is a series of recommendations we have for all of our employers going through a Trust Fund audit.

- Be prepared and produce the documents requested.
- Have someone that understands the significance of the audit and that can speak for the company represent the company during the process. This is not a job for a newly hired clerical person. Also, be aware that the auditor is also making general observations about your company. The condition of the information requested, how the phones are answered, the signage on your vehicles, how the employees are treated, etc., all make an impression — one way or another— on how your business is run.
- Understand the difference in terminology between “non-union” and “non-bargaining”. Some people that have come from other industries use the two terms interchangeably. But telling an auditor that “Joe Smith is one of our non-union employees” (instead of a non-bargaining estimator) will send a misleading message that may unnecessarily extend their review.
- Understand that payroll auditors know more about your software than you do. You may receive a request to transfer data to an external drive or scan. You are not obligated to do that, and be aware that most accounting software programs have hidden audit trail functions that detect if an entry has been changed. The purpose of the auditor coming to your office in the first place is to review the information first hand.
- If you are covering your “Alumni” electrical workers in the office with NEBF, or if you are covering your non-bargaining employees under our Electrical Workers Health and Welfare Trust (and many of you are) produce copies of the subscription agreements. If you do not have a subscription agreement, find out why, now, and remedy the situation immediately. We can help you with that.
- Have your accounts payable personnel sensitized to the necessity of having billings to the company worded correctly — especially in regard to any labor involved with the purchase of material, engineering services, or sub-contract work.
- Know some of the warning signs that auditors look for (*see box on page one*) and be prepared to address them if they apply to your situation.

## Better Supervisor Tailgate Safety Meetings

### A "How To" Approach Seminar

Our Electrical Industry Trust will be sponsoring the next segment of our Supervisor Safety Training on Friday, November 30th, with a two hour seminar on Tailgate Safety meetings, presented by Jeff Juhala, our Trust Safety Consultant. Lunch will be served at noon with the seminar beginning at 12:30 p.m. & concluding at 3:00 p.m.

Companies routinely tell Supervisors to do a "better job" on their Tailgate Safety Meetings. Supervisors are told to make it an important quality experience that not only relates the safety issues of the project, but also meets all the legal needs for the company. Few Supervisors are ever given any real training on "how to" actually do better tailgate meetings.

#### Covered Training Topics

Basics of a Good Tailgate Meeting

How to Improve Your Tailgate Meetings

Creating, Finding and Using "Primers" for Meetings  
(sample primers will be provided)

Having a "Solid Conclusion" to Your Meeting

Waiting for and Creating "Responses" from the Group

Participants will also be given the opportunity to practice and receive positive and encouraging feedback from the trainers and other participants. The practice and feedback is the most powerful part of the entire training. Some participants have commented that it was uncomfortable at first, but ultimately the most important and helpful part of the training.

Plan to send at least one person from your firm that you charge with the responsibility of conducting safety meetings. We are confident they will discover what you have been missing in your tailgate meetings, and leave with knowledge, practice, and practical tools to do a better job. Registration for this seminar is free. If you wish to attend and/or have any questions simply email [ss\\_ccneca@sbcglobal.net](mailto:ss_ccneca@sbcglobal.net) or call 925-372-3222 x10.

## Sound and Communication Agreement Wage/Fringe Benefit Increase

On Saturday, October 13<sup>th</sup>, the IBEW Membership voted to allocate their \$1.25 increase as follows:

Effective December 1, 2012:

\$ .50 to Wages

\$ .50 to Pension

\$ .25 to Health

(New Health Reimbursement Account)

\$1.25 Total

The wage sheets and cost per hour sheets may be viewed and downloaded from our website.

<http://www.ccneca.org/Wages.html>

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## DSA Continues Streamline Certification of School Projects

A new process has been developed for reporting of final school construction project costs to the Division of the State Architect (DSA) by the school or community college district. This is part of an effort to streamline field oversight and certification of school projects.

Form DSA-168 eliminates the need for DSA to track all change orders individually for the purpose of calculating fees.

This new reporting process took affect on May 1, 2012. All projects regardless of age are subject to this process and the use of the reporting form DSA-168.

These changes implement code changes in Title 24, Part 1, Section 4-339, that states in part "The final certification of compliance will not be issued until the owner has filed a notice of completion and has filed a statement of final actual project cost as identified in Section 4-322, and has paid all required fees to the Department of General Services."

This change has no impact on the requirement for contractors to sign and complete for DSA-6.

The new DSA-168 for can be viewed [here](#).

Source: LA NECA Panelboard.

Coming  
November 30

Location  
Electrical Industry  
Training Center  
1255 Muir Road  
Martinez, CA

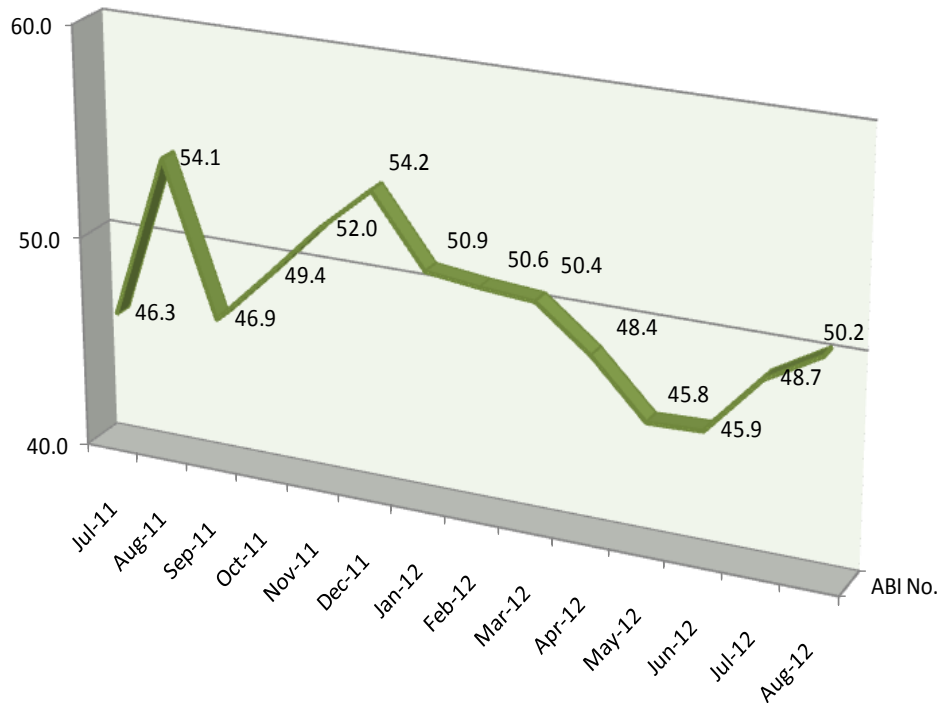
Time  
Lunch @ Noon  
Seminar  
Begins 12:30 p.m.  
Ends 3:00 p.m.

RSVP  
[ss\\_ccneca@sbcglobal.net](mailto:ss_ccneca@sbcglobal.net)

925-372-3222 x10

# Architectural Billings Index

The American institute of Architects (AIA) reported that the August ABI Score was 50.2. Since a score above 50 indicates an increase in billings, it looks like we could be coming off the bottom of a seven month slide, which may also represent the bottom of this extended recession in the construction industry.



One of our signatory contractors recently decided to close his doors and has a number of tools he would like to sell. If you are interested in purchasing some used ladders, power tools, gang boxes or benders, etc. just give us a call and we will send you a CD with pictures of what's available.

## SYNERGY eLinks

[eLinks Referenced in Surviving a Trust Fund Audit](#)

[Central States Pension Fund vs. Central Transportation](#)

[Sample Initial Request Letter](#)

[Questions and Answers on Payroll Audits](#)

[Sound and Communication Wages and Cost Per Hour Sheets](#)

[New DSA-168 Form](#)

[Is Your Business Compliant with Accessibility Law?](#)

[NECA NOW](#)

[Personal Best](#)