

**Rules and Regulations for the Vacation Savings Benefit  
Provided By  
International Union of Operating Engineers Local 825 Welfare Fund**

**Highlights and General Information**

**Effective Date:** The International Union of Operating Engineers Local 825 Vacation Savings Benefit was provided by and funded by the Vacation Savings Fund from March 20, 1974 to July 31, 2011. On August 1, 2011, the Vacation Savings Fund merged into the Welfare Fund. This booklet describes the Vacation Savings Benefit in operation on August 1, 2011 and thereafter as part of the Welfare Fund.

**Administration:** The Benefit is self-administered by the Board of Trustees of the International Union of Operating Engineers Local 825 Welfare Fund and/or their designee:

65 Springfield Avenue, Second Floor  
Springfield, NJ 07081  
Telephone: (973) 671-6800

**Employer Trustees**

Jack Daly  
Jack Kocsis, Jr.  
Ross Pepe  
Richard Forman

**Union Trustees**

Gregory Lalevee  
John Lynch  
Robert Occhiuzzi  
Matty White

**Contributions:** The Benefit is funded by employer contributions as specified in a *collective bargaining agreement* with the *Union* or a *participation agreement* with the Trustees. This money is held and invested by the Trustees pursuant to a *trust agreement* for the purpose of paying benefits specified in these Rules and Regulations. Upon written request to the Plan Administrator, you are entitled to receive information as to whether a particular employer is a *contributing employer* and, if so, the employer's address. Additionally, you are entitled to receive a copy of the *collective bargaining agreement* or *participation agreement* under which you are covered upon written request to the Plan Administrator and you are entitled to examine the agreement at the Plan Administrator's office.

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## How the Benefit Works

The Vacation Savings Benefit provides you with an annual savings or vacation savings payment. The money for this benefit comes from **contributing employers** who have agreed to make vacation savings contributions to the Welfare Fund on your behalf as specified in a **collective bargaining agreement** with the **Union** or in a **participation agreement** with the Trustees. Only employers who have signed a written agreement to contribute are required to remit contributions to the Fund on your behalf. If you are uncertain whether your employer has a current signed contract, you may request in writing from the Plan Administrator information as to whether a particular employer is a **contributing employer** and, if so, the employer's address. Once remitted to the Fund, your contributions are held in your **account** within the Fund, subject to investment gain or loss and subject to reasonable and necessary administrative expenses. Your **account** is valued each year on October 31 and the contents of your **account**, as determined after this valuation, are distributed each year during the first week of December.

## Eligibility

You are eligible to participate in the Benefit if you perform at least 1 hour of work that is covered by a **collective bargaining agreement** between a **contributing employer** and the **Union** or covered by a **participation agreement** between a **contributing employer** and the Trustees of the Fund.

The Operating Engineers Local 825, the Operating Engineers Local 825 Apprenticeship Training and Retraining Fund and the Operating Engineers Local 825 Benefit Funds have entered into **participation agreements** with the Trustees under which contributions are made for eligible employees of Local 825 or any of the Local 825 Funds.

Owner-Operators who have signed a **collective bargaining agreement** and who are primarily engaged in performing bargaining unit work and who have employees covered by a **collective bargaining agreement** with Local 825 are also eligible to participate in the Benefit. If you are an Owner-Operator and you are interested in participating in the Benefit, please contact the Plan Administrator for more information.

## Contributions

Your **contributing employer** will make vacation savings contributions to the Welfare Fund on your behalf as specified in its **collective bargaining agreement** or **participation agreement**.

## Your Annual Benefit Amount

Your annual benefit amount is based upon vacation savings contributions made to the Welfare Fund on your behalf between November 1 and October 31. The Plan Administrator allocates these contributions to an **account** in your name within the Fund. In addition, the Plan Administrator adjusts your **account** on October 31 of each year as

follows:

- The Plan Administrator credits or deducts your pro rata share of overall investment return or loss during the period of November 1 to October 31;
- The Plan Administrator deducts your pro rata share of reasonable and necessary administrative expenses during the period of October 1 to September 30 or during such other period of 12 consecutive months as determined in the discretion of the Trustees.

You have no right, title, or interest in your *account* while it is held in the Fund. You have only the right to a distribution subject to the terms and conditions specified in these Rules and Regulations.

Your account is reduced to zero each time you receive a distribution of your account under these Rules and Regulations.

Once every 12 months, you may request in writing a report on the balance in your *account* from the Plan Administrator. The balance specified in any such report is subject to adjustment as described in this Section.

## **Distributions**

The Plan Administrator distributes your benefit amount each year during the first week of December. You do not need to apply. Your savings benefit check is sent to you automatically by the Plan Administrator. In addition, you may receive a supplemental distribution if, after the annual December distribution, the Fund receives vacation savings contributions for work you performed prior to October 31.

## **Death**

If you die, your surviving spouse will receive the full value of your *account*, if any, in a lump sum on the December distribution date next succeeding the date of your death.

If you are not married at the time of your death, the full value of your *account* is distributed to your estate on the December distribution date next succeeding the date of your death.

## **Incapacity**

In the event it is determined that you are unable to care for your affairs because of mental or physical incapacity, any benefit due may be paid to the legal guardian, committee, or legal representative designated to handle your affairs. The same rule applies in the case of a surviving spouse who is entitled to payment of a deceased participant's *account* balance.

## **No Assignment of Benefit**

You do not have the right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, or commute any property while it is held in your *account*. In addition, except as otherwise provided by law, property held in your *account* is not subject to any legal process, to levy, to execution upon, to attachment, to garnishment, to bankruptcy and insolvency proceedings, or to any action by any creditor for payment of any obligation or debt incurred by you.

## **Exclusive Benefit**

No part of the assets of the Benefit shall be returned to any *contributing employer* or the *Union* under any circumstances.

## **Taxation**

Your *contributing employer* must include vacation savings contributions to the Fund on your behalf in your gross income.

## **Your ERISA Rights**

Participants in the Benefit have certain rights and protections under the Employee Retirement Income Security Act of 1974, as amended, commonly known as ERISA. ERISA states that, as a participant, you are entitled to:

- Examine, without charge, all governing documents at the Plan Administrator's office and other specified locations. These documents include insurance contracts, collective bargaining agreements, and a copy of the latest annual report (Form 5500 series) filed by the Fund with the U.S. Department of Labor;
- Obtain copies of all governing documents including insurance contracts, collective bargaining agreements, the latest annual report and updated Rules and Regulations upon a written request directed to the Plan Administrator. The Plan Administrator may charge a reasonable amount for the copies;
- Receive a summary of the Fund's annual financial report. The Plan Administrator is legally required to give participants a copy of this summary annual report; and
- Obtain a statement, free of charge, telling you the amount of your account. This statement must be requested in writing and the Plan Administrator is not obligated to provide it more than once a year.

Further, you may not be fired or discriminated against in any way as a means of preventing you from obtaining your savings benefits or exercising your rights under ERISA.

Under ERISA, there are steps you can take to enforce your rights. For instance, if you request materials from the Fund and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the documents and pay you up to \$110 a day until you receive them – unless you did not receive the materials for reasons beyond the Plan Administrator's control. In addition to defining the rights of participants, ERISA imposes obligations on the people responsible for operating the Benefit. These persons are legally referred to as fiduciaries and must act prudently and in the sole interest of the participants and beneficiaries. If the fiduciaries misuse the Fund's money or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, however, or if the court finds your claim to be frivolous, the court may order you to pay these costs and fees.

If you have any questions about your Benefit, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest Area Office of the Employee Benefits Security Administration, U.S. Department of Labor listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

### **Claim and Appeal Procedure**

*ERISA* regulations describe steps that must be taken in the cases when a claim for payment is denied, either in whole or in part. A claim might be denied if:

- The *Plan Administrator* does not believe that you are entitled to payment; or
- The *Plan Administrator* disagrees with the payment amount to which you believe you are entitled.

If your claim is denied, the *Plan Administrator* has to notify you in writing within 90 days after receiving your claim. The notice must contain the following information:

- The specific reason(s) your claim was denied.
- The provisions of these Rule and Regulations that support the denial.
- If your application was incomplete, the additional information needed to complete your claim request and an explanation of why it is needed.
- Information on what you need to do in order to have the claim denial reviewed.
- A statement of claimant's right to bring a civil action under section 502(a) of *ERISA* following an adverse determination on review.

If you do not receive notice on the status of your claim from the *Plan Administrator* within 90 days, or within 180 days if it is a special case (see **Time Extensions**), you can assume your claim has been denied and you may request a review of your denial.

Once the *Plan Administrator* has reviewed your claim and notified you in writing of the denial within the required 90-day period, you may contest the denial. You must submit a written request for a review of that denial within 60 days of the date of the *Plan Administrator's* written notification. In case the *Plan Administrator* does not notify you of the denial within the required 90-day period, your request for review should be submitted immediately after the 90-day period expires.

If you wish, you (or your representative) may review the appropriate governing documents and submit written information supporting your claim to the Board of Trustees.

The Board of Trustees will review your request at their next quarterly meeting immediately following receipt of your request (unless you submitted your request less than 30 days prior to the next quarterly meeting in which case your request will be heard at the following quarterly meeting) and you will receive written notification of a final decision within five (5) days after a meeting at which your request is heard unless the *Trustees* need additional time (see **Time Extensions**). This notification will:

- Be written in clear, easily understood language;
- Inform you of the decision, the reasons why that decision was made, and the specific provisions from these Rules and Regulations that support it;
- Inform you of your right to receive free of charge upon your request reasonable access to, and copies of, all documents and other information relevant to your claim; and
- State your right to bring an action under section 502(a) of *ERISA*.

If you disagree with the results of the review, you may file suit in federal or state court. If your suit is successful, the court may award you legal costs, including attorneys' fees.

### **Time Extensions**

Under special circumstances, the 90-day initial period for notice of a decision regarding an initial claim for benefits may be extended. Similarly, the *Trustees* may delay ruling on your request for review until the quarterly meeting following the meeting that immediately followed receipt of your request. You will be informed in writing of any extensions before the end of these initial notification periods. The extension notice will state the special circumstances necessitating the delay and the revised date by which you may expect a decision.

## **Factual Findings and Rule Interpretations**

With respect to any claim or appeal, the Trustees shall be the sole judges of the standard of proof required in any case and factual findings by the Trustees shall be final and binding on the claimant. In this regard, each participant and/or beneficiary making a claim or appeal under these Rules and Regulations shall furnish to the Trustees any information or proof determined by the Trustees or their agent to be reasonably necessary for the administration of the Benefit or for the determination of any matter before the Trustees or their agent. If a participant and/or beneficiary makes false statements or furnishes fraudulent information in connection with a claim, appeal, or other matter before the Trustees or their agent and such statements or information result in payment of benefits in violation of these Rules and Regulations, then the Trustees may deny, suspend, or discontinue such benefits and shall have the right to recover any benefit payments made in reliance on such false statements or fraudulent information.

The Trustees have the sole and exclusive discretion to construe and interpret these Rules and Regulations and such constructions and interpretations shall be final and binding on the claimant.

## **Amendment**

The Trustees may amend or modify these Rules and Regulations at any time in accordance with the Trust Agreement.

## **Termination**

In the event of termination of this Benefit by the Trustees pursuant to the *trust agreement* or by operation of law, the Trustees shall adjust all participant *accounts* on the day prior to the effective date of the termination. The *accounts* shall be adjusted as described in the “Your Annual Benefit Amount” section of these Rules. On the effective date of termination or shortly thereafter, the Plan Administrator shall distribute to you the assets then remaining in your *account*. In the event that a participant cannot be located within 6 months of the effective date of termination, such a participant’s *account* shall be forfeited and distributed on a pro rata basis to all participants to whom payments have or can be made.

## **Glossary**

### **ACCOUNT**

An individual *account* is maintained for you in the Fund. An *account* contains your share of the total vacation savings assets, including all vacation savings contributions made on your behalf, earnings or losses on those contributions, and charges for administrative expenses.

## **COLLECTIVE BARGAINING AGREEMENT**

An agreement between the *Union* and a *contributing employer* which describes the terms and conditions of employment for individuals covered under the agreement, including participation in this Benefit. A copy of any such agreement may be obtained by participants and beneficiaries upon written request to the Plan Administrator and is available for examination by participants and beneficiaries.

## **CONTRIBUTING EMPLOYER**

Any company that employs persons covered under a *collective bargaining agreement* or *participation agreement* requiring vacation savings contributions to the Fund.

## **PARTICIPATION AGREEMENT**

An agreement between a *contributing employer* and the Trustees requiring contributions for employees covered by the agreement. A copy of any such agreement may be obtained by participants and beneficiaries upon written request to the Plan Administrator and is available for examination by participants and beneficiaries.

## **TRUST AGREEMENT**

An agreement granting beneficial ownership of vacation savings assets to participants and beneficiaries of this Benefit pursuant to the terms and conditions set forth herein and legal ownership and administration responsibilities to the Board of Trustees. This Benefit is part of the International Union of Operating Engineers Local 825 Welfare Fund and, therefore, the Trust Agreement for that Fund applies to this Benefit.

## **UNION**

The International Union of Operating Engineers Local 825 and its affiliates.