

# **MEBA VACATION PLAN – ATLANTIC, GULF, AND PACIFIC COASTS**

## **RULES AND REGULATIONS**

**(Restated as of January 1, 2019)**

**(Amended and Consolidated through Amendment No. 20-1)**

### **1. DEFINITIONS**

- (A) “Covered Employment” means work for which a Participating Employer is required to make contributions to the Vacation Plan on a Participant’s behalf. Travel time to join a vessel in a foreign port is considered Covered Employment for purposes of the Vacation Plan, unless otherwise provided in your collective bargaining agreement. Travel time to a domestic port or returning from a vessel is not considered Covered Employment. In addition, Overlap Days are not considered Covered Employment, unless contributions are required for overlap days under your collective bargaining agreement.
- (B) “Full Operating Status” or “FOS” means a Military Sealift Command ship or a Maritime Administration (MARAD) ship that is fully operational, with complete crews aboard, and which has been fully activated.
- (C) “Overlap Day” means the first day which a Participant who reports to work aboard a vessel and the Participant being relieved are both required to work, and are paid a shipboard wage for that same day.
- (D) “Participant” means an individual who is covered under the Vacation Plan by virtue of the individual’s work in Covered Employment.
- (E) “Participating Employer” means any Employer who is required to make contributions to the Vacation Plan according to a collective bargaining agreement with the District No. 1 – Pacific Coast District, MEBA.
- (F) “Reduced Operating Status” or “ROS” means a Military Sealift Command ship or a Maritime Administration (MARAD) ship that is withdrawn from Full Operating Status because of decreased operational requirements.
- (G) “Union” means the District No. 1 – Pacific Coast District, MEBA.
- (H) “Vacation Plan Office” means the administrative office of the Vacation Plan, located at 1007 Eastern Ave, Suite 400, Baltimore, MD 21202.
- (I) “Vacation Plan” or “Plan” means the MEBA Vacation Plan – Atlantic, Gulf and Pacific Coasts.

## **2. COVERAGE**

An individual becomes covered under the Vacation Plan if the individual works in Covered Employment for a Participating Employer which is a party to a collective bargaining agreement with the Union.

## **3. FILING OF APPLICATIONS FOR VACATION BENEFITS**

- (A) Applications may be sent to the Vacation Plan Office via regular mail, email, or fax.
- (B) Applications may be filed in person at any of the Union branch offices where the Vacation Plan maintains an office.
- (C) The application must be completed in full and signed. The following documents must be submitted with the application:
  - (1) Voucher of last vacation benefit check.
  - (2) All pay vouchers issued since your last vacation period.
  - (3) Copies of original Coast Guard discharge papers covering sea voyages since the Participant's last vacation.
  - (4) Participating Employer payroll vouchers for all port time, unearned wages, or travel time to a vessel in a foreign port, if applicable. Vacation benefits are not payable for travel time from the vessel.
  - (5) Proof that Social Security, Medicare, and State taxes, if applicable, have been paid in full by the Participating Employer for the year in which the vacation benefits apply (if proof is not submitted Social Security Taxes will be withheld).
  - (6) Application for "Converted Overtime Worksheet", if applicable.
  - (7) Early Return Form, if applicable.
  - (8) Letter from authorized Union official granting permission for early return to employment or sailing beyond the 315-day or 720-day limits, if applicable.
  - (9) Carryover form, if a partial vacation was taken.
- (D) Plan Participants and dependents may not assign, transfer, or convey any of the benefits provided by the Vacation Plan. Benefits are also not subject to any creditor's claim or to legal process by any creditor of any Plan Participant. Similarly, a Participant cannot assign, transfer, or convey any rights that he or she has or may have under the Plan or the Employee Retirement Income Security Act

of 1974, as amended (“ERISA”). This prohibition on assignments of rights specifically includes, but is not limited to, any legal right to bring claims for benefits or to appeal claims determinations, breaches of fiduciary duty, prohibited transactions, statutory violations and statutory penalties. Any attempt to assign any Vacation Plan benefits or legal rights to any third party shall be immediately invalid, void, and unenforceable. Notwithstanding the foregoing, the Vacation Plan will honor a written request for an application for vacation benefits which authorizes the payment to and/or assigns to the Union, and any affiliate, a percentage or portion of the vacation benefits to which he is and/or will be entitled for the payment of Union dues or service charge. The Vacation Plan will also honor a written assignment of Vacation Plan benefits in favor of an organization or entity approved by the Trustees. Such requests shall be on forms approved by the Plan administrator.

#### **4. VACATION BENEFITS**

- (A) A Participant must, in order to be eligible for vacation benefits, have a minimum of 30 days of employment within a 720-day period for which vacation benefits have not been previously paid. In the computation of such minimum requirement, all employment under a collective bargaining agreement between a Participating Employer and the Union, shall be accumulated and considered. However, a Participant may receive vacation benefits based on less than 30 days of employment provided:
  - (1) the Participant has no carry-over vacation (either regular vacation carry-over or converted overtime carry-over) on the books at the time the Participant applies for vacation; and
  - (2) the Participant takes all of the vacation (regular and converted overtime) earned on the less than 30 days of employment.
- (B) A Participant meeting the requirement of subsection (A) shall be eligible for vacation benefits for employment with one or more Participating Employers, as follows:
  - (1) For all Covered Employment on a vessel which is designed primarily as a container carrier, barge carrier, automobile carrier, roll-on roll-off or OBO vessel, the vacation benefit shall be calculated as follows, unless otherwise provided in the collective bargaining agreement:
    - (a) 26 days of vacation for each 30 days of Covered Employment for Second and Third Assistant Engineers and Mates.
    - (b) 30 days of vacation for each 30 days of Covered Employment for First Assistant Engineers and First Mates, and Chief Engineers and Masters.

- (2) For all Covered Employment on a tanker vessel the vacation benefit shall be calculated as follows:
    - (a) 18 days of vacation for each 30 days of Covered Employment for First, Second and Third Assistant Engineers.
    - (b) 20 days of vacation for each 30 days of Covered Employment for Chief Engineers and Masters.
  - (3) For all Covered Employment on vessels not described in paragraphs (1) and (2) of this subsection (B), the vacation benefit shall be calculated as follows:
    - (a) 22 days of vacation for each 30 days of Covered Employment for Second and Third Assistant Engineers and Mates.
    - (b) 30 days of vacation for each 30 days of Covered Employment for First Assistant Engineers and First Mates and Chief Engineers and Masters.
  - (4) For all Covered Employment with a Participating Employer that has a collective bargaining agreement with the Union that provides for different schedules of vacation benefits than those listed above, the vacation benefit shall be calculated in accordance with the provisions of the said collective bargaining agreement.
  - (5) If a vessel does not spend 48 hours in American Ports after a foreign voyage (to be measured from “Finished with Engines” to “Standby” where shore leave is available), Participants who remain on the vessel for the subsequent voyage shall, for the period of the foreign voyage immediately preceding the vessel’s arrival in an American Port, have their vacation benefit calculated as stated in subparagraph (B)(1) above.
- (C) A Participant may elect to take part of his accrued vacation, including converted overtime vacation, and carry over the balance. The election to take a partial vacation must be made at the time the Participant applies for Vacation Plan benefits. A partial vacation may be for any number of vacation days, provided that a maximum of 90 vacation days based on regular Covered Employment and 90 vacation days based on converted overtime days may be carried over at any time. If a Participant has exercised the option of taking less than the entire amount of his accrued vacation, including converted overtime vacation, and a vacation balance remains, the Participant may return to Covered Employment or extend his partial vacation. A partial vacation may be extended up to five times, subject to the following conditions:
- (1) The Participant may elect a first extension of partial vacation, which may be for any number of vacation days, up to the balance of the carry over vacation.

- (2) A Participant may return to Covered Employment at the end of a first extension of a partial vacation or may elect to take a second extension which may be for any number of vacation days, up to the balance of the carry over vacation.
- (3) A Participant may return to sailing Covered Employment at the end of a second extension of a partial vacation or may elect to take a third extension which may be for any number of vacation days, up to the balance of the carry over vacation.
- (4) A Participant may return to sailing Covered Employment at the end of a third extension or may elect to take a fourth extension which may be for any number of vacation days up to the balance of the carry over vacation.
- (5) A Participant may return to sailing Covered Employment at the end of a fourth extension or may elect to take a fifth Extension which may be for any number of vacation days up to the balance of the carry over vacation. At the end of a fifth extension, the Participant must take the remaining balance of regular vacation days and converted over time vacation.
- (6) If a Participant returned to sailing Covered Employment for which vacation benefits are payable, at any time between the Participant's partial vacation and first extension, or between his first extension and second extension, he may elect to receive all or a portion of his carry over vacation but may not receive benefits accrued on his new Covered Employment unless he has worked in such new Covered Employment for at least 30 days. If the Participant has carry over vacation and returns to sailing Covered Employment at the end of his second extension, he may elect to receive the balance of his carry over vacation but may not receive benefits accrued on his new Covered Employment unless he has worked in such Covered Employment for at least 30 days. In no event shall a Participant be permitted to take more than five extensions of a partial vacation including a partial vacation that is based upon or that includes converted overtime vacation.
- (7) A Participant who elects to receive days of vacation in lieu of overtime pay in accordance with Section 7 may elect to take all of his converted overtime vacation or he may elect to take part of his converted overtime vacation and carry over the balance as set forth in this Section 3(C). If a Participant elects to take only part of his converted overtime vacation and carry over the balance, the converted overtime partial vacation, including extensions, will be paid at the rate in effect during the employment period in which the overtime was earned. In addition, the converted overtime partial vacation, including extensions, must be taken immediately preceding the regular vacation, partial vacation or extensions.

- (D) Thirty days shall constitute one month. Twelve months or 360 days shall constitute one year.
- (E) The amount of vacation shall be prorated in accordance with the base rate of pay received by the Participant in the period used for computing eligibility or otherwise computed as set forth in the collective bargaining agreement.
- (F) There shall be no cash allowance in lieu of vacation.
- (G) Port Relief employment is prohibited during the period of a Participant's vacation unless the Participant submits an "Early Return Form" signed by an authorized Union official.
- (H) In the case of Government activated vessels, where authorized in an applicable collective bargaining agreement, Participants who return to Reduced Operating Status (ROS) service aboard a vessel may receive vacation benefits earned in Full Operating Status (FOS) while they are working in ROS, provided that the benefits were earned while working in FOS aboard a Government activated vessel. Participants working in ROS may also receive vacation benefits earned while working in ROS. In either case, in order to be eligible to receive benefits, discharge papers must be submitted for the period up to the day prior to submission of the application for benefits. The vacation period will only be placed prospectively from the last day of Covered Employment, be it FOS or ROS. Pension credit under the MEBA Pension Trust or credit towards eligibility under the MEBA Medical and Benefits Plan for both the FOS/ROS vacation time and the overlapping FOS/ROS employment will not be granted.
- (I) A Participant may elect to file for vacation benefits earned while serving aboard a MARAD or MSC vessel while actively working in ROS. In order to be eligible to receive benefits, discharge papers must be submitted for the period up to the day prior to submission of the application for benefits. Upon payment of vacation benefits, the vacation period associated with the payment will only be placed prospectively from the last day of Covered Employment, be it FOS or ROS. Pension credit under the MEBA Pension Trust or credit towards eligibility under the MEBA Medical and Benefits Plan for both the FOS/ROS vacation time and the overlapping FOS/ROS employment will not be granted.
- (J) Notwithstanding anything herein to the contrary, a one-time Supplemental Payment in the amount of \$3,363,170.40 ("Aggregate Supplemental Payment") shall be allocated and paid as follows:
  - (1) Eligible Participants. The class of Plan participants eligible to receive an allocation of the Aggregate Supplemental Payment ("Eligible Participants") is those participants who had a contribution made on their behalf to the Plan between October 1, 2011 and April 17, 2017 ("Eligibility Period").
  - (2) Port Relief Not Included. For purposes of determining Eligible Participants, contributions for Port Relief are not taken into account.

- (3) Determination of Amount of the Aggregate Supplemental Payment to be Allocated as a Supplemental Payment to Each Eligible Participant. The allocable amount of each Eligible Participant's Aggregate Supplemental Payment (the "Supplemental Payment") will be determined as follows:
- (a) Each Eligible Participant will receive one credit for any calendar year in which a contribution was made to the Vacation Plan on his or her behalf during the Eligibility Period, up to a maximum of seven credits.
  - (b) The sum of all of the credits calculated in accordance with subparagraph (a) will be divided into the Aggregate Supplemental Payment to arrive at an amount per credit.
  - (c) Each Eligible Participant shall be entitled to receive a Supplemental Payment equal to the amount calculated per credit in accordance with subparagraph (b) multiplied by the number of credits the Eligible Participant has earned as determined in accordance with subparagraph (a).
- (4) No Offset. Any past overpayment of Plan benefits received by an Eligible Participant shall not be offset against the Supplemental Payment.
- (5) Distribution of Supplemental Payment. The Plan will distribute the Supplemental Payment determined accordance with paragraph (3) to each Eligible Participant in a single lump sum payment as soon as practicable after November 13, 2020. If an Eligible Participant has died prior to payment, the Eligible Participant's Supplemental Payment will be made the Eligible Participant's Plan beneficiary. If an Eligible Participant or Beneficiary cannot be located or fails to cash the Supplemental Payment check, his or her Supplemental Payment will be forfeited. The Plan will allocate forfeited Supplemental Payments on a pro-rata basis among the other Eligible Participants who are receiving a Supplemental Payment as determined by the Trustees.
- (6) Additional Provisions.
- (a) The Supplemental Payment will not (i) be taken into account for pension purposes, or (ii) treated as an additional day or days of covered employment for credit or eligibility in any of the MEBA benefit plans.
  - (b) Eligible Participants will not be required to remain off a vessel or otherwise out of covered employment for additional days due to receipt of the Supplemental Payment.

**5. MAXIMUM EMPLOYMENT PERIOD**

Vacation benefits outlined in Section 3 may be accumulated on a maximum of 315 days of Covered Employment within 720 consecutive calendar days. The maximum benefit accrual shall be that vacation accrued through the end of the voyage in which the 315th day of employment occurred. However, the Participant may take one additional voyage providing a relief replacement is not available and the appropriate Union official certifies via letter to the Vacation Plan Office and the Participant that permission for the additional voyage has been granted. The Vacation Plan Office will forward a copy of the letter to the Participating Employer involved.

ROS employment and sea-trial employment aboard “Ready Reserve Fleet” vessels shall not count for purposes of the 315-day maximum employment rule outlined in this Section.

NOTE: the 315 days of Covered Employment and the 720 consecutive calendar day period resets each time vacation is applied for.

**6. MAXIMUM BENEFIT ACCRUAL PERIOD**

The maximum benefit accrual period shall be the end of the voyage in which the 720th consecutive calendar day, during which no vacation benefits have been paid, occurs. However, a Participant may take one additional voyage providing a relief replacement is not available and the appropriate Union official provides written certification to the Vacation Plan Office and the Participant that permission for the additional voyage has been granted. The Vacation Plan Office will forward a copy of the letter to the Participating Employer involved.

With respect to both the 315-day maximum employment period in Section 5 above and the 720-day maximum accumulation period in this Section 6, the penalty for excess sailing shall be loss of credit for vacation purposes on the employment which is in excess of the periods hereinabove provided. Accordingly, no vacation wages will be paid, nor will any credit be given for Pension Plan, Medical Plan, or Training Plan purposes for any excess employment.

ROS employment and sea-trial employment aboard “Ready Reserve Fleet” vessels shall not count for purposes of the 720-day maximum accumulation period outlined in this Section.

**7. CONVERTED OVERTIME AND SUPPLEMENTAL PAY**

Unless otherwise provided in the collective bargaining agreement, a Participant may elect to convert all or part of his overtime pay or all or part of his supplemental pay into days of vacation. Such election must be made at the beginning of the voyage. The appropriate form must be completed by the Participant and an authorized Participating Employer representative and submitted with the application for vacation pay. A period of vacation based on converted overtime or supplemental pay must be taken immediately preceding the regular vacation period and will be computed in accordance with the following formula:

Gross Overtime or Supplemental Pay ÷ Daily Vacation Wage = Vacation Days

A Participant may elect to take part of his converted overtime vacation benefit and carry over the balance. The rules covering partial converted overtime vacations are described in Section 3(C) hereof.

**8. DAYS OF VACATION DO NOT COUNT AS DAYS OF WORK**

Days of vacation shall not constitute days of work for the purpose of determining vacation benefits.

**9. COMMENCEMENT OF VACATION**

A vacation period will commence the day following the last day of Covered Employment, unless a request is made by the Participant for a later commencement date at the time the application for vacation pay is filed. In no event will a vacation period be assigned prior to the last day of Covered Employment. Vacation benefits are not payable until the vacation period commences.

**10. VACATION MUST BE TAKEN**

In order to collect vacation benefits a Participant must be off the ship for the full period of his vacation after the vacation has been earned, except in cases where the collective bargaining agreement the Participant is working under expressly provides that the Participant may remain on the ship even though vacation benefits have been paid.

Vacation must be taken in one continuous period. Vacation benefits shall be paid on a pro-rata basis for all accumulated work performed to the date of application. Failure to submit proof of all accumulated work performed to the date of application may result in loss of vacation benefits (i.e., actual vacation wages will not be paid, and credit will not be given for Pension Plan, Medical Plan, and Training Plan purposes) on the employment not submitted.

**11. EARLY RETURN FROM VACATION**

Written permission from the Union to return to work prior to the end of a vacation period will constitute an early return and the early return days must be made up no later than the Participant's next vacation. If prior written permission is not obtained and the Participant returns to work early, he will be subject to a penalty. The penalty is loss of vacation benefits for the next six months (180 days) of employment (i.e., actual vacation wages will not be paid, and credit will not be given for Pension Plan, Medical Plan, and Training Plan purposes). The loss of 180 days is of vacation benefits and associated credits and does not affect credits earned for the Covered Employment worked on the early return days. The penalty applies to all vacation days earned for 180 days of employment, regardless of the number of vacation days actually earned.

The Trustees in their sole discretion may determine that circumstances exist that require a Participant to return to Covered Employment early, such as in the event of war, national

emergency or a shortage of personnel resulting from a Federal reactivation of vessels or other cause. This is called a Special Early Return. If the Trustees have authorized the use of Special Early Returns, a Participant who is requested by the Union to return to work prior to the end of his vacation period may do so. The Participant will have the choice to make up the early return days as for a regular early return or to use the Special Early Return rules and not make up the early return days. Participants approved to take a Special Early Return who do not make up the days are only eligible for one day of Pension credit day per day and will forfeit the duplicate day of credit for Pension Plan purposes. However, the wages for the original vacation day and the earned wages for the employment day will both count towards pay for Pension purposes. In addition, other contractual wages and benefits apply: wages remain as per the CBA (i.e., vacation wage and shipboard pay); MPB as per the CBA; and credit for Medical Plan and Training Plan purposes. When a Special Early Return is elected, Participants cannot move that credit or wages to an open period.

## **12. REQUIRED TIME OFF**

A Participant may be required to take time off without pay in each contract year, said time off to follow a vacation period. The Trustees of the Plan shall have the discretion to determine the number of days Participants might be required to take off in any contract year without pay.

## **13. TRAVEL TIME**

- (A) Travel time to a vessel in a foreign port is creditable for vacation purposes unless otherwise provided in the collective bargaining agreement.
- (B) Travel time to a vessel in an American port is not creditable for vacation purposes.
- (C) Travel time from a vessel in either a U.S. or foreign port is not creditable for vacation purposes.

## **14. RETURN TO VESSEL AFTER VACATION**

- (A) Following the completion of vacation, a Participant shall, whenever possible, rejoin his vessel at his previous rating or be assigned to any other available vessel of the Participating Employer in an equivalent position to the first vacancy, or as otherwise mutually agreed.
- (B) No transportation is obligatory to effect such return to duty on his vessel.
- (C) All previous rules and interpretations heretofore adopted, which are not in conflict with the above, shall continue in effect.

## **15. SURVIVOR BENEFITS**

Any vacation benefits payable at the time of a Participant's death will be paid to the Participant's designated beneficiary(ies). If there is no designated beneficiary on file with the Vacation Plan, vacation benefits will be paid to the Participant's spouse, if any. If there

is no spouse, benefits will be paid to the Participant's children, in equal shares. If the Participant has no children, benefits will be paid to the Participant's estate.

## **16. PORT RELIEF WAGE PROGRAM**

- (A) When a vessel is in the continental United States or Hawaiian port, on Saturdays, Sundays and recognized holidays, and between the hours of 4 P.M. and 8 A.M. on weekdays (Monday through Friday) and the regular Participant(s) leaves the vessel, a "Port Relief Engineer(s)" may be employed. No "Port Relief Engineer(s)" is required if the vessel is in lay-up or when the vessel is not in commission.
- (B) "Port Relief" wage rates are paid in accordance with the terms of the applicable collective bargaining agreement.
- (C) Application for "Port Relief" wages may be made on the appropriate time sheet and certified by an authorized Company representative.
- (D) Night, holiday and weekend relief Participants are not entitled to any vacation credit and benefits.
- (E) Port Relief employment is prohibited during the period of a Participant's vacation unless the Participant has received written permission from an authorized Union official.
- (F) The Plan will honor a written request which authorizes payment to and/or assigns to the Union, and any affiliate, a percentage or portion of the vacation factor which is included in the payment for night, holiday and weekend relief work for the payment of Union dues or service charge. Such requests shall be on a form approved by the Plan administrator.

## **17. APPEAL PROCEDURE**

### **(A) Claim Denials**

If your claim for vacation benefits or port relief wages is denied, in whole, or in part, the Vacation Plan Office will provide you with written notice of the specific reasons for the denial within ninety (90) days of the date your claim was submitted. If special circumstances require additional time for processing the claim, for example, if there is missing documentation, the Vacation Plan Office will provide you with written notice of the need for an extension within the ninety (90) day period. The extension of time will not exceed one hundred eighty (180) days from the date you submitted your claim.

The written denial will contain the following information:

- the reason for the denial;
- reference to the Rules and Regulations provisions on which the denial is based;

- a description of any additional information that would complete or support your claim, and explanation of why it is needed;
- an explanation of how you can get your claim reviewed by the Plan's Trustees, the time limits involved, and your right to bring a civil action if the Trustees deny your claim after review.

(B) Appealing a Denied Claim

If your claim for vacation benefits or port relief wages is denied, you or your authorized representative may submit a written appeal to the Plan's Trustees. The written appeal must be submitted within sixty (60) days of the date of the Plan's initial denial letter.

You or your authorized representative may submit written comments, documents, and other information relating to your claim. In addition, upon request and free of charge, you may have reasonable access to, and copies of, all documents, records, and other information relevant to your claim.

The Trustees will consider your appeal at the next regularly scheduled meeting immediately following receipt of your written appeal, unless your appeal is received within thirty (30) days preceding the date of such meeting. In that case, the Trustees will consider your appeal at the second regularly scheduled meeting following receipt of your appeal. If special circumstances require a further extension of time, the Trustees will consider your appeal at the third regularly scheduled meeting following receipt of your appeal. If an extension is necessary, you will receive written notice of the extension, describing the special circumstances and the date as of which the Trustees will consider your appeal.

The Trustees' decision will be in writing and will be final and binding on all parties. The written decision will be sent to you within five days after the Trustees render their decision and will contain:

- the specific reason or reasons the appeal was denied;
- reference to the Rules and Regulations provisions on which the appeal denial is based;
- a statement that you are entitled to receive, upon request, and free of charge, reasonable access to, and copies of, all documents, records, or other information relevant to your claim;
- a statement explaining your right to bring a civil action under Section 502(a) of the Employee Retirement Income Security Act ("ERISA").

**18. UNDELIVERABLE BENEFITS**

Notwithstanding any provision to the contrary, if a check is issued for Benefits described hereunder, and the Plan, after making a reasonable effort, is unable to locate the Participant or survivor as described in Section 15, the Benefits of such Participant shall be forfeited as

of the end of the Plan Year that includes the twelfth month after the date such check was issued.

A record of the uncashed check amount shall be maintained and if such Participant or survivor subsequently makes proper claim for such amounts, the amount of such check shall be restored and shall be distributed to such Participant or survivor, but without any interest or earnings.

## **19. LEGAL ACTION**

Legal action to recover benefits under the Plan may not be filed before exhausting all administrative remedies provided under Section 17, and may not be filed later than 12 months following the date of the Trustees' denial of an appeal. All legal actions filed against the Plan must be filed in the United States District Court for the District of Maryland.

## **20. OVERPAYMENTS**

In the event a Participant is paid vacation benefits ("Benefits") in excess of the amount to which he was entitled pursuant to the appropriate rules, Regulations and interpretations of the Plan, whether on the basis of the Plan's error or the error or false statements of the Participant or a third party, the Participant is required to reimburse the Plan in full and the Plan shall be entitled to recover any such Benefits. Future benefit payments, if any, shall be made on the correct and appropriate basis.

The Plan has a constructive trust, lien, and/or equitable lien by agreement in favor of the Plan on any overpaid Benefits received by the Participant or a representative of the Participant (including an attorney) that is due to the Plan under this Section, and any such amount is deemed to be held in trust by the Participant for the benefit of the Plan until paid to the Plan. By accepting Benefits from the Plan, the Participant consents and agrees that a constructive trust, lien, and/or equitable lien by agreement in favor of the Plan exists with regard to any overpayment, and in accordance with that constructive trust, lien, and/or equitable lien by agreement, the Participant agrees to cooperate with the Plan in reimbursing it for all of its costs and expenses related to the collection of those Benefits.

Any refusal by the Participant to reimburse the Plan for an overpaid amount will be considered a breach of the Participant's agreement with the Plan that the Plan will provide the Benefits available under the Plan and the Participant will comply with the rules of the Plan. By accepting Benefits from the Plan, the Participant affirmatively waives any defense the Participant may have in any action by the Plan or Trustees to recover overpaid amounts or amounts due under any other rule of the Plan, including but not limited to a statute of limitations defense or a preemption defense, to the extent permissible under applicable law.

If the Participant refuses to reimburse the Plan for any overpaid amount, the Plan has the right to recover the full amount owed by any and all methods which include, but are not necessarily limited to, offsetting the amounts paid against any future Benefits otherwise payable to or on behalf of such Participant.

The Plan also may recover any overpaid Benefits by pursuing legal action against the party to whom the Benefits were paid. In the event it is necessary for the Trustees to file suit against an Participant or other party in order to collect any amount owed to the Plan arising out of or related to an overpayment or erroneous payment, such Participant or other party shall reimburse the Trustees for all reasonable attorneys' fees and costs of suit, and other professional fees and costs expended in connection with the Trustees' collection of any amounts owed to the Plan or the enforcement of any of the Plan's rights to reimbursement. In the event of legal action, the Participant shall also be required to pay interest at the rate determined by the Trustees from time to time from the date the Participant becomes obligated to repay the Plan through the date that the Plan is paid the full amount owed. The Plan has the right to file suit against the Participant in any state or federal court that has jurisdiction over the Plan's claim.

In the case of a deceased Participant, the Plan's rights apply to the decedent's estate and the estate is required to comply with the Plan's rules and procedures to the same extent as a Participant.