

RULES OF THE OPERATING ENGINEERS  
WORKERS' COMPENSATION TRUST ALTERNATIVE DISPUTES  
RESOLUTION PROGRAM

Pursuant to the provisions of California Labor Code Section 3201.5 the Operating Engineers Workers' Compensation Trust Alternative Disputes Resolution Program replaces all of those dispute resolution processes contained in Division 4 of the California Labor Code. These rules may be changed by the Board of Trustees of the Operating Engineers Workers' Compensation Trust at any time. The rules are intended to facilitate and expedite the resolution of disputes involving work-related injuries.

**ARTICLE 1. Pre-Arbitration Discovery:**

Section 1. Pre-Arbitration discovery shall be allowed in the same manner as discovery is permitted in California Labor Code Section 5710. Provided any references therein to the appeals board or workers' compensation judges or referees shall be deemed to be references to the Trust. Mediators or Arbitrators as the context so require.

Section 2. Upon filing of a claim of workers' compensation injury with any contributing member of the Trust at the request of any concerned party it shall be the duty of all parties to immediately serve upon all concerned parties, as the case may be, copies of all medical reports in their possession or under their control, and related to the injury or that may come into their possession or under their control.

**ARTICLE I-A. Ombudsman:**

Section 2.a The operating Engineers' Workers' Compensation Trust Fund, shall employ, with the approval of the Trustees, at least one individual to serve as an ombudsperson. The ombudsperson is an employee at will and as such may be discharged/removed upon mutual agreement of the trustees. A vote of the trustees of the Operating Engineers' Workers' Compensation Trust Fund shall serve to affect any personnel action deemed necessary.

The ombudsperson shall, upon request of an employee, assist the employee in filing claims related to alleged work-related injuries subject to the Addendum. The ombudsperson shall receive complaints from employees who have filed claims for Workers' Compensation benefits subject to the Addendum and upon the request of the employee shall assist the employee in attempting to resolve those disputes with the Workers' Compensation insurer of an employer subject to the Addendum.

## ARTICLE II. Commencing Mediation:

Section 3. Provided a dispute has been submitted to the Ombudsman and it has not been resolved within 10 working days, or such period mutually agreed upon between the employee and the employer, mediation may be commenced by either party. When used in any of the mediation and arbitration rules, policies, and procedures, the word "employer" also refers to the employer's workers' compensation insurance carrier. The ombudsman shall sign the "Request for Mediation" certifying that the dispute or issue which is the subject of the Mediation request was presented to the Ombudsman for resolution but the Ombudsman was unable to resolve same.

The Operating Engineers' Workers' Compensation Trust Fund shall appoint a mediator from the list within three (3) working days of receipt of a request for an appointment of a mediator. Mediators shall be appointed on a rotating basis, however, no mediator who is unable to meet with the employee and representative of the insurer within five (5) working days of appointment by the Operating Engineers' Workers' Compensation Trust Fund shall be appointed to mediate that dispute. Upon request by the employee, the ombudsperson shall assist the employee in any mediation proceedings.

The mediator shall contact the employee and a representative of the employer's insurer. Both the employee and employer's insurer shall supply the mediator with requested information. The mediator shall meet separately with the employee and the representative of the insurer. The mediator may schedule a mediation session to be attended by both the employee and the representative of the insurer. If such meeting is scheduled, it shall be conducted at a location selected by the Operating Engineers' Workers' Compensation Trust Fund and said location shall be no more than forty(40) miles from the residence of the employee and within the eleven (11) Southern California counties of California and if no such residence exists, at the offices of the Operating Engineers' Workers' Compensation Trust Fund or within forty (40) miles of the Operating Engineers' Workers' Compensation Trust Fund's offices.

If the dispute is not resolved within fifteen (15) working days of the appointment of the mediator, the mediation process shall be deemed exhausted absent a contrary stipulation between the employee and the representative of the insurer.

In the event the parties mutually object to mediation, the procedures described in this Section shall not apply and the parties may proceed to arbitration under Section 9.

Section 4. Either party may request the Ombudsman to assist in the filing of a request for mediation.

Section 5. The "Request for Mediation" shall be filed with the Trust on the "Request for Mediation" form. A copy of which is attached to these procedures.

Section 6. At the time of filing the "Request for Mediation" the Trust shall serve a copy of the "Request for Mediation" by mail, facsimile transmission, or other means to assure receipt within 3 days upon the other party or parties.

### ARTICLE III. Processing the "Request for Mediation":

Section 7. Upon receipt of the "Request for Mediation" the Trust shall:

- a. Endorse and date stamp the Request as filed and assign a Trust Mediation number to the case.
- b. The appointment of a mediator and the scheduling of mediation activities shall be in accordance with Section 3 of Article II.

### ARTICLE IV. Mediator:

Section 8. The Mediator shall take whatever steps the Mediator deems reasonable to bring the dispute to an agreed conclusion within the time allowed for completing the Mediation, including scheduling mediation sessions, implementing means to discuss the dispute with the parties individually or collectively, requiring a party or parties to provide additional documentation or information, appointing -Issue.

Within ten days of completion of the Mediation, the Mediator shall file with the Trust the "Mediator's Statement of Completion and Result" and serve a copy of same on the parties and the ombudsman.

### ARTICLE V. Arbitration:

Section 9. Within sixty (60) calendar days following the filing of the "Mediator's Statement of Completion and Result" any party not satisfied with the outcome of Mediation may file with the Trust a request that the matter be referred to Arbitration. Failure to timely file the request for referral to arbitration of the disputed issue or issues submitted to the Mediator shall bar any further right to adjudicate such disputed issue or issues. The time for filing the request for arbitration may be extended upon a showing of good cause filed in writing with the Trust and approved by an Arbitrator.

If a dispute related to a claim has not been resolved pursuant to Article IV, the worker or representative of the insurer may request the Operating Engineers' Workers' Compensation Trust Fund to appoint an arbiter from the list to arbitrate the dispute. Absent extraordinary circumstances, arbitration must be requested no later than 60 days after the mediation process involving the same dispute has been exhausted or the date the parties have mutually objected to mediation.

