

## UMWA HEALTH AND RETIREMENT FUNDS

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2121 K Street, NW, Suite 350 • Washington, DC 20037 • Telephone: (202) 521-2200

December 2009

Dear Employer:

The UMWA Cash Deferred Savings Plan requires employers to provide an Annual Report to the Trustees of the Plan. *The report is required even if no employees of a company are contributing to the Plan.* The Plan document at Section 10.06, Employer's Duties, provides:

An Employer shall provide to the Trustees ... **no later than January 31 of each Plan Year**, a list of all eligible Employees (**whether or not** they are Participants) and the Compensation each Employee received from the Employer during the immediately preceding Plan Year.

This section also requires the employers to identify anyone who is a *Highly Compensated Employee* as defined in the Internal Revenue Code. The Code requires employers to examine employee compensation data for only the "look back" year--calendar year 2008. But the other required information on the Annual Report pertains to participant annual compensation, 401(k) deferrals, etc., for the year being tested--calendar year 2009 (the "determination" year).

The purpose of this report is to enable the Trustees to carry out the legally mandated, numerical, nondiscrimination tests. If the initial calculations reveal impermissible discrimination, the Trustees must return a portion of the 401(k) contributions made by Highly Compensated Employees to them, by no later than March 15, 2010. Those employees must then include the returned amounts on their 2009 personal tax returns due April 15, 2010.

**It is critically important that we receive your 2009 Annual Report as early as possible in January 2010.** Only by receiving *all employers'* properly completed Annual Reports on time can the Trustees compile the data and perform the tests required to determine whether refunds will be necessary, and then process any required refunds by March 15, 2010. This is important to you also because **employers must pay a 10 percent excise tax** on any amounts that should be, but are not, refunded by March 15.

The enclosures provide the specifications for your 2009 Annual Report. **EMPLOYERS MUST SUBMIT THEIR ANNUAL REPORT(S) THROUGH OUR SECURED ELECTRONIC WEBSITE.** You should also place a copy of this letter and its enclosures in your Employer Manual.

Please provide this information to the individual(s) who will be responsible for preparing your company's 2009 Annual Report. If you have any questions, please call me at 202-521-2278.

Sincerely,

Alberto J. Enciso  
Sr. Manager, CDSP & Budget

Attachments

**UMWA Cash Deferred Savings Plan**  
**Additional Information Concerning the Annual Report to Trustees**

**1. Which employees are to be included on this Annual Report?**

Include all employees who received a W-2 for 2009 and **who were eligible to contribute** to the UMWA Cash Deferred Savings Plan ("Savings Plan" or "Plan") at any time during 2009, whether or not they actually did make 401(k) contributions. If you have employees on your 2009 W-2 list who were **never eligible to participate** in the Savings Plan (including non-classified employees, employees owning 5 percent or more of the company, **employees who had no hours in 2009 or who had S&A hours only in 2009**), we would prefer that they be **excluded entirely**. If no ineligible employees are identified on your list, include a statement indicating either that ineligible employees were excluded, or that there were no ineligible employees.

**2. Exactly what information is required in the Annual Report?**

The separate enclosure entitled "*Employer's 2009 Annual Report - Format*", the instructions for that document, and the other enclosures provide detailed instructions on exactly what information is needed. We refer you to those enclosures and the information provided below.

**3. What is included in "total compensation" for Annual Report purposes?**

To supply the information in Columns 3 through 6 of your Annual Report (see enclosed Annual Report-Format), you should use information prepared in conjunction with your calendar year **2009** W-2 reports. Paid compensation will be the totals in Box 1 on the W-2 forms, titled "Wages, Tips and Other Compensation." In Box 13 (Code D) on the W-2 form, you are required by the IRS to show any 401(k) Plan contributions made for the employee for payrolls included on the W-2 form. The phrase "total compensation" used in Columns 5 and 7 of your Annual Report means the sum of all of the following: (1) Box 1 compensation; (2) Box 12 Code D 401(k) Plan contributions; and (3) if any, also include before-tax employee contributions to any Internal Revenue Code Section 125 plan or arrangement (e.g., a dependant childcare or medical expense reimbursement plan or arrangement) and any before-tax employee contributions to any Internal Revenue Code Section 132(f) plan or arrangement (i.e., qualified transportation fringe benefits). Please note that you must use calendar year **2009** ("**determination**" year) information to answer the questions in Columns 1 through 6 of your Annual Report; but for Column 7, you must use calendar year **2008** ("**look-back**" year)--**not** calendar year 2009--information.

**\*\* Do not include employer "Enhanced Premium Contributions" (EPC) made on behalf of new inexperienced miners in any column of the annual report. \*\***

**4. Why and how do we identify Highly Compensated Employees?**

Why? The Trustees need to know which employees are highly compensated in order to perform certain legally mandated tests on the Savings Plan as a whole. These tests are designed to prevent plans from discriminating in contributions or benefits on behalf of Highly Compensated Employees, as that term is defined in the Internal Revenue Code. Your Annual Report is not complete unless you supply us with information sufficient to enable us to identify your Highly Compensated Employees who are eligible to participate in (whether or not they actually contribute to) the Savings Plan.

How? To identify Highly Compensated employees, employers must examine compensation data for the calendar year immediately **proceeding** the year being tested. The year being tested now is calendar year 2009, which means that employers must examine calendar year 2008 data to determine which employees are Highly Compensated Employees.

To satisfy their reporting requirements concerning the identification of Highly Compensated Employees, employers must supply the following information: Indicate whether the eligible employee had "total compensation" *exceeding \$105,000* for **2008** (see Column 7 on the enclosed Annual Report-Format).

**5. How are the 401(k) contributions or cash payments for Unused Personal or Sick Leave Days as of December 31, 2008 or as of December 31, 2009 included in the Annual Report?**

Personal and Sick Leave payments made either in cash or as additional contributions to the Savings Plan are compensation, which is reportable on your employee W-2s (Box 1 if paid in cash, Box 13 if paid as contributions to the 401(k) Plan.) Applicable regulations and instructions for Form W-2s are used to determine which calendar year you should be reporting those amounts on the W-2s. If you have included these amounts properly on each employee's W-2 for 2009, and follow the Annual Report instructions included in this memorandum, your Personal and Sick Leave Days payments will automatically be reported properly for Annual Report purposes.

**6. When and how should we submit the Annual Report?**

Please submit/upload as **early as possible in January 2010** of your company's 2009 Annual Report through the secured UMWA CDSP Electronic Website at the web address listed below:

<https://comserve.umwafunds.org/cdsp/logon.aspx>

**IMPORTANT:** You must upload the file(s) containing your company's 2009 Annual Report in an **Excel or ASCII "," delimited format file.**

If you do not have a login ID or password to login to the secured UMWA CDSP Electronic Website, please email Alberto J. Enciso at [aenciso@umwafunds.org](mailto:aenciso@umwafunds.org) your name, title, company name, and email address. An email notification will be sent to you after you have been setup.

**UMWA CASH DEFERRED SAVINGS PLAN**  
**Instructions for Employer's 2009 Annual Report - Format**

**Your report must include the following data:**

1. Company name.
2. Funds' Company/Mine Identifying Number.
3. Spreadsheet:
  - Col. 1: Employee name (last, first, middle initial).
  - Col. 2: Employee social security number (with dashes).
  - Col. 3: 2009 W-2 compensation (Box 1 - Wages, Tips & Other Compensation) for each eligible employee.
  - Col. 4: 2009 UMWA Cash Deferred Savings Plan 401(k) contributions (Box 13: Code D) for each eligible employee.
  - Col. 5: Insert the "total compensation" for calendar year **2009**. This is probably the sum of Col. 3 and Col. 4 for each eligible employee. However, "total compensation" technically also includes any before-tax employee contributions to any Internal Revenue Code Section 125 plan or arrangement (e.g., a dependent childcare plan or arrangement or a medical expense reimbursement plan or arrangement) and any before-tax employee contributions to any Internal Revenue Code Section 132(f) plan or arrangement (i.e., qualified transportation fringe benefits). Therefore, if they exist, these Section amounts must be added into "total compensation" as well. **Do not include employer "Enhanced Premium Contributions" (EPC).**
  - Col. 6: The ratio of Col 4 divided by Col. 5.\*
  - Col. 7: Employees with 2008 "total compensation" **greater than** \$105,000.\*\*

\* This calculation is needed for all employees who were eligible to make 401(k) contributions to the UMWA Cash Deferred Savings Plan during 2009, whether or not they actually did make any contributions. The result will be – 0% - for eligible employees who did not actually make 401(k) contributions during 2009.

\*\* Note that Columns 7 requires you to provide information about calendar year **2008** compensation-- **not 2009 compensation**. These are **required** entries on your Annual Report as they are the **Highly Compensated Employee indicators**. "Total compensation" means the sum of all of the following: (1) Box 1 compensation; (2) Box 13 Code D 401(k) Plan contributions; and (3) if any, also include before-tax employee contributions to any Internal Revenue Code Section 125 plan or arrangement (e.g., a dependant childcare or medical expense reimbursement plan or arrangement) and any before-tax employee contributions to any Internal Revenue Code Section 132(f) plan or arrangement (i.e., qualified transportation fringe benefits). **Do not include Enhanced Premium Contributions ("EPC").**

Adjustments to your Annual Report based on subsequent changes or corrections to your W-2 or 401(k) contribution totals should be **promptly** reported to the Trustees in the same format.

4. Summary Information: See self-explanatory questions A - G on the Annual Report - Format.
5. Name and telephone number of responsible person who prepared the report.
6. Date report was prepared.

**Upload report as early as possible in January of 2010 through the secured UMWA CDSP Electronic Website at <https://comserve.umwafunds.org/cdsp/logon.aspx>. Questions? Call Al Enciso at 202-521-2278 or 1-800-291-1425 (option 1, extension 2278).**

**UMWA CASH DEFERRED SAVINGS PLAN  
EMPLOYER'S 2009 ANNUAL REPORT - FORMAT**

**Company Name:** \_\_\_\_\_ **Company Number:** \_\_\_\_\_

- Col. 1:** List those calendar year 2009 employees who were **eligible** to contribute to the UMWA Cash Deferred Savings Plan, even if they did not **actually** contribute.
- Col. 2:** Employees social security number (with dashes).
- Col. 3:** Calendar year 2009 W2 compensation (box 1).
- Col. 4:** Calendar year 2009 W2 participant contributions (box 13: Code D only).
- Col. 5:** Must use calendar year 2009 Data: "Total Compensation" (Most likely, Col. 3 + Col. 4, see instructions).
- Col. 6:** Must use calendar year 2009 Data: CY09 Participant Deferral Percentage (Col. 4 / Col. 5).
- Col. 7:** Check the box in this column **only if** the named employee had "Total Compensation" in calendar year **2008** of **greater than** \$105,000.

| Col. 1                             | Col. 2                     | Col. 3  | Col. 4  | Col. 5                                   | Col. 6  | Col. 7                                      |
|------------------------------------|----------------------------|---|---|--|---|---|
| Employee Last Name, First Name, MI | Employee Social Security # | Must Use CY09 Data: CY09 W-2 Compensation (Box 1) | Must Use CY09 Data: Participant Contributions (Box 13: Code D Only) | Must Use CY09 Data: "Total Compensation" | Must Use CY09 Data: Participant Deferral Percentage | Must Use CY08 Data: Highly Compensated Only |
| XXXXXXXX, XXXXXX X.                | xxx-xx-xxxx                | \$xx,xxx.xx                                       | \$x,xxx.xx  | \$xx,xxx.xx                              | xx.xxxx%  |   |
| XXXXXXXX, XXXXXX X.                | xxx-xx-xxxx                | \$xx,xxx.xx                                       | \$x,xxx.xx  | \$xx,xxx.xx                              | xx.xxxx%  | *   |
| XXXXXXXX, XXXXXX X.                | xxx-xx-xxxx                | \$xx,xxx.xx                                       | \$x,xxx.xx  | \$xx,xxx.xx                              | xx.xxxx%  |   |
| XXXXXXXX, XXXXXX X.                | xxx-xx-xxxx                | \$xx,xxx.xx                                       | \$0   | \$xx,xxx.xx                              | 0.00%   | *   |
| XXXXXXXX, XXXXXX X.                | xxx-xx-xxxx                | \$xx,xxx.xx                                       | \$0   | \$xx,xxx.xx                              | 0.00%   |   |
| XXXXXXXX, XXXXXX X.                | xxx-xx-xxxx                | \$xx,xxx.xx                                       | \$x,xxx.xx  | \$xx,xxx.xx                              | xx.xxxx%  |   |
| XXXXXXXX, XXXXXX X.                | xxx-xx-xxxx                | \$xx,xxx.xx                                       | \$0   | \$xx,xxx.xx                              | 0.00%   |   |
| <b>Totals: 7</b>                   | --                         | <b>\$xxx,xxx.xx</b>                               | <b>\$xx,xxx.xx</b>  | <b>\$xxx,xxx.xx</b>                      | <b>7</b>  | <b>2</b>                                    |

**SUMMARY**

| Employee Category   | Total # of Employees | Total Deferral % (sum %) |
|---|----------------------|--------------------------|
| <b>I. Contributing Participants (Col. 6: % &gt; 0.0%)</b>   |                      |                          |
| A. Highly Compensated (Col. 7 = *)                          | 1                    | aa.aaa%                  |
| B. Non-Highly Compensated                                   | 3                    | bb.bbb%                  |
| <b>C. Total Participants (A+B):</b>                         | <b>4</b>             | <b>cc.ccc%</b>           |
| <b>II. Non-Contributing Participants (Col. 6: % = 0.0%)</b> |                      |                          |
| D. Highly Compensated (Col. 7 = *)                          | 1                    | 0.00%                    |
| E. Non-Highly Compensated                                   | 2                    | 0.00%                    |
| <b>F. Total Non-Participants (D+E):</b>                     | <b>3</b>             | <b>0.00%</b>             |
| <b>G. Total Employees(C+F or Col. 1 Total):</b>             | <b>7</b>             | <b>gg.gg%</b>            |

H. Are any ineligible employees (i.e., employees who are not eligible to contribute to the Savings Plan) included on your report? Yes\_\_ No **X** **Note:** If your report does contain information on employees who were not eligible to participate in the UMWA Cash Deferred Savings Plan of 1988 (for example, you included information on 5%-or-more owners, management employees, employees who had no hours in 2009 or employees who had S&A hours **only**), those individuals should be lined out (or otherwise **clearly** indicated as ineligible employees) and they should **not** be counted in **any** totals.

**Prepared By:** \_\_\_\_\_ **Telephone Number:** \_\_\_\_\_ **Date Prepared:** \_\_\_\_\_  
(Type or print name)