Dear NECA Member,

Since the enactment of the Patient Protection and Affordable Care Act (the “ACA”), NECA and the IBEW have been collaborating to address multiple provisions of the ACA that will impact NECA contractors and their employees from both a legislative and regulatory standpoint. NECA continues to call on Congress and the Administration to enact common sense healthcare reform by modifying sections of the ACA to ensure costs are kept down and health care benefits are preserved. Our recent work includes legislative and regulatory efforts to address these concerns before full implementation is complete.

As a Member of NECA, we want to provide you with the information and tools you need to comply with the ACA. The intent of this letter is to provide you with an overview of some of the key provisions of the ACA, and how the ACA may impact you.

**An Overview of the Affordable Care Act.** There are key provisions of the ACA that create new restrictions and limitations on health plan design. For instance, the ACA phases out health plan pre-existing condition exclusions, requires certain preventive services to be covered at no cost to the employee, restricts annual and lifetime limits on certain health care benefits, requires all plans to have no more than a 90-day waiting period for newly eligible employees, and restricts certain out of pocket expenses. Other parts of the ACA create new annual fees, notice and reporting requirements for health plans and employers, and whistleblower protections for employees.

Most of the dialogue today surrounds the ACA’s employer mandate, which requires certain large employers to provide certain health care coverage to employees or pay a penalty. Under the ACA, only employers that employ 50 or more full-time or full-time equivalent employees are subject to the employer mandate. If you employ fewer than 50 full-time or full-time equivalent employees (which involves combining part-time employees to obtain a full-time employee), then the employer mandate does not apply to you. The employee count includes all employees whether they are in the bargaining unit or not. Under the ACA, a full-time employee is any employee who works at least 30 hours per week or at least 130 hours per month. When determining whether you are a large employer, all full-time and full-time equivalent employees of certain related entities must also be counted together. If you are not a large employer, there is no ACA requirement to offer coverage to any or all of your employees, but there could be a requirement to offer coverage under your collective bargaining agreement or participation agreement.

If the employer mandate applies to you because you are a large employer, then you must offer certain health insurance to 95% of your full-time employees or pay a penalty. Coverage has to be offered to all full-time employees, again whether they are in the bargaining unit or not. Coverage for bargaining unit employees can be offered under a multiemployer plan, and coverage for non-bargaining unit employees can be offered under your employer plan or through the small employer health plan exchanges, if you qualify.

There are two, separate penalties under the employer mandate: the first is a “no coverage penalty,” and the second is an “unaffordable coverage penalty.” Under the no coverage penalty, a large employer must offer basic, comprehensive health insurance coverage to at least 95% of its full-time employees, or the employer will be assessed a penalty of $166.67 per month for each full-time employee.
employee (working at least 30 hours a week) after the first 30 employees. The penalty is triggered if just one of the employer's employees goes to a public health insurance exchange (also referred to as marketplaces) and qualifies for a subsidy based on their income level.

In addition, under the unaffordable coverage penalty, if the employer mandate applies because you are a large employer, even if health plan coverage is offered, the coverage must meet certain cost-sharing requirements and it must be "affordable" to your employees. These requirements apply to both multiemployer and single employer health plans. To meet the cost-sharing requirements, the plan must cover 60% of the health care costs under the plan. To meet the affordability requirement, the cost of the plan's employee-only coverage must not exceed 9.5% of (1) the employee's W-2 wages from the prior year or (2) the employee's rate of pay on the first day of the year (or an hourly rate multiplied by 1,560 hours). If the plan does not meet either the cost-sharing or affordability requirements, then the employer will be assessed a penalty of $250 per month for each employee who goes to a public health insurance exchange and qualifies for a subsidy based on their income level.

Both employer mandate penalties are only triggered when an employee goes to a public health insurance exchange and qualifies for a subsidy. The public health insurance exchanges are scheduled to hold an open enrollment in October 2013, and be operational by January 1, 2014. In general, an employee will qualify for a subsidy through the exchange where the employee either receives no coverage from the employer, or receives coverage that does not meet the cost-sharing or affordability requirements, and the employee's household gross income is between 100% - 400% of the federal poverty level.

Penalties Delayed Until 2015. On July 2, 2013, the Obama Administration announced that the employer mandate penalties, along with the related reporting requirements in IRS Forms 6055 (relating to individual mandate) and 6056 (relating to employer mandate), will now be delayed until January 1, 2015. Until then, the rest of the ACA, including the plan design and waiting period requirements, will continue to apply.

How the Employer Mandate Applies to Multiemployer Plans. If the employer mandate applies to you and you contribute to a multiemployer health plan pursuant to a collective bargaining agreement, the IRS has provided limited relief. If the multiemployer health plan is providing coverage to your full-time employees, and that coverage meets the cost-sharing and affordability tests discussed above, you will not be assessed either penalty under the employer mandate for those employees. This is the case, even if not all of your bargaining unit employees are covered under the multiemployer plan due to the plan's eligibility provisions, as long as you are making contributions on their behalf pursuant to a collective bargaining agreement or participation agreement. NECA is committed to providing coverage through the multiemployer plans with which it is involved that meets the cost-sharing and affordability requirements under the ACA. Accordingly, you should not be assessed any penalty for your full-time employees who are covered by those multiemployer plans. However, if you are a large employer, and over 5% of your full-time employees are not covered by a multiemployer or single employer health plan, then you may need to offer those non-covered employees health coverage, or you could be assessed a penalty under the employer mandate.

Important Upcoming Requirements. One particularly important action-item for employers this fall will be to provide all employees (whether or not you offer coverage to them through a multiemployer or single employer health plan) with a Notice of Coverage Options. The Notice of Coverage Options is to inform all employees about the public health insurance exchanges. The Notice generally must be provided to employees by October 1, 2013, and within 14 days of hire for newly hired employees after October 1, 2013. The Department of Labor has released model notices for employers that offer coverage and for those that do not. The link to the templates is: http://www.dol.gov/ebsa/healthreform/, and copies of the templates are enclosed with this letter.

NECA is committed to helping its Members prepare for the ACA. Over the next few weeks and months, we plan to distribute more guidance and instruction to assist in your preparation of the ACA. We also
plan to continue our legislative and regulatory efforts, and we will continue to keep you updated on our efforts.

Should you have any questions about this letter or the ACA, please contact Geary Higgins, Vice President of Labor Relations at gmh@necanet.org; 301.215.4510 or, Kristen Gowin, Director of Government Affairs at km@necanet.org; 301.215.4537.

Sincerely,

John M. Grau
NECA Chief Executive Officer