

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION

AND

CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as “DOL/WHHD” or “Department”), and the California Labor and Workforce Development Agency (“LWDA”), (collectively referred to as “the agencies” or “the parties”) recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern among the regulated community in the state of California.

The agencies are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest.

THEREFORE, IT IS MUTUALLY AGREED THAT:

This memorandum of understanding (MOU) agreement is intended to memorialize this understanding between DOL/WHHD and LWDA. This MOU is a voluntary agreement that expresses the good-faith intentions of DOL/WHHD and LWDA; it is not intended to be legally binding, does not create any contractual obligations, and it is not enforceable by any party. This MOU agreement does not obligate and will not result in an exchange of funds, personnel, property, services, any kind of financial commitment, or information containing individual names or other personally identifiable information (PII). This MOU agreement outlines procedures to be followed by both DOL/WHHD and LWDA in working together to enforce and do outreach on laws of common concern with respect to California’s workforce.

Agency Responsibilities

DOL/WHHD enforces the Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. DOL/WHHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family and Medical Leave Act, wage garnishment provisions of the Consumer Credit Protection Act, and a number of employment standards and worker protections as provided in several immigration related statutes. Additionally, DOL/WHHD administers and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract Act and other statutes applicable to Federal contracts for construction and for the provision of goods and services. Nothing in this agreement limits DOL/WHHD’s enforcement authority.

LWDA is the California executive branch Agency that oversees, among other entities, the Department of Industrial Relations (DIR) and the Employment Development Department (EDD), which collectively enforce California labor laws to protect workers and create an even playing field for employers and administer benefits that include workers’ compensation, unemployment insurance, disability insurance, and paid family leave. Nothing in this agreement limits the LWDA’s enforcement authority.

I. Purpose

The purpose of the MOU is to maximize and improve the enforcement of the laws administered by DOL's DOL/WHD and by LWDA, its DIR, and its EDD.

II. Authority

The substantive authority under which the parties will be carrying out the activities contemplated in the MOU is found under 29 U.S.C. § 211(b).

III. Outreach and Education

- The agencies agree to, when appropriate, coordinate, conduct joint outreach presentations, and prepare and distribute publications for the regulated community of common concern.
- The agencies agree to jointly disseminate outreach materials to the regulated community, when appropriate.
- All materials bearing the DOL or DOL/WHD name, logo, or seal must be approved in advance by DOL.
- All materials bearing the name, logo, or seal of LWDA or any of its subunits must be approved in advance by LWDA.

IV. Points of Contact (POCs)

- The agencies designate the following POCs responsible for coordinating the partnership activities and meeting annually to review terms and conditions and areas of mutual concern. The agencies will notify each other in the event of the separation or long-term absence of their contact persons.
- POC designees:

DOL/WHD
Michael Eastwood
Director of Enforcement, West
90 7th Street, #4-390
San Francisco, CA 94103
(415) 241-3537
Eastwood.Michael@dol.gov

LWDA
Nancy Steffan
Deputy General Counsel
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814
(916) 530-1708
Nancy.Steffan@labor.ca.gov

V. Enforcement

Where appropriate and to the extent allowable under law, and subject to the agreement described in Part VI restricting the exchange of personally identifiable information (PII):

- The agencies may conduct joint investigations in the State of California if appropriate or if opportunity provides.
- The agencies may coordinate their respective enforcement activities and assist each other with enforcement, where appropriate and to the extent allowable under law.
- The agencies will make referrals of potential violations of each other's statutes, where appropriate.

VI. Information

- The agencies agree to exchange information on laws and regulations of common concern to the agencies, to the extent practicable.
- The agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law or policy.
- The agencies will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, if possible.
- The agencies believe that the exchange of personally identifiable information (PII), including but not limited to the PII of workers who have provided information to the agencies about potential violations of law, is generally not necessary to effectuate the goals of this MOU. Therefore, the agencies only will exchange material and data containing PII if the parties jointly determine the exchange to be absolutely necessary.
 - PII is defined as any information that could be used to identify a particular person. PII includes, but is not limited to, names, dates of birth, home addresses, telephone numbers, email addresses, social security numbers, driver's license numbers, and passport numbers.
 - In the context of an agency investigation, PII includes information that would tend to reveal the identities of individuals who have given information to the agency, any employee statements in an agency's investigative or audit files, and any other personal information protected by any relevant law or regulation.

VII. Training

- The agencies will exchange information related to policy or regulatory changes to State or Federal laws, to the extent permissible.

VIII. Previous Agreements

- This agreement replaces and supersedes any previous Partnership Agreement MOU between the parties.

IX. Effect of MOU Agreement

- This MOU agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations.
- By entering into this partnership, the agencies do not imply an endorsement or promotion by either agency of the policies, programs, or services of the other.
- Nothing in this MOU agreement is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.
- This MOU agreement is not intended to be legally binding and does not confer any rights on any private person.
- This MOU agreement is not intended to confer any rights against the United States, its agencies, or its officers upon any private person.
- This MOU agreement is not intended to confer any rights against the State of California, its agencies, or its officers upon any private person.
- Nothing in this MOU agreement will be interpreted as limiting, superseding, or otherwise affecting the agencies' normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOU agreement also does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
- This agreement will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, the California Information Practices Act, and any other applicable federal laws and state laws.
- This MOU agreement contains all the terms and conditions agreed upon by the agencies concerning the subject matter of the agreement. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the agencies. This agreement is not intended to confer any right upon any private person or other third party.

X. Exchange of Information

To the extent permitted by law, the agencies understand that in order to effectuate the purposes and provisions of this MOU, it will be necessary, from time to time, to exchange

information, some of which may be considered confidential. It is the policy of each of the parties to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitation that any such cooperation must be consistent with its own statutory obligations, enforcement efforts, and policies, including the agreement restricting the disclosure of individual names and other PII described in Part VI. It is the view of the parties that an exchange of information in which both agencies are proceeding with a common legal interest is to their mutual benefit. The agencies to this MOU agreement recognize the importance of being able to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or making a public disclosure.

In consideration of these concerns, and subject to any applicable laws and regulations regarding the handling of such information, the agencies agree as follows:

1. When appropriate, the agencies may exchange information on laws and regulations of common concern and interest, to the extent practicable and allowable by law and policy.
2. The parties will be available to discuss and provide information to one another on topics of mutual interest, overlapping jurisdiction, or certain areas of expertise, when able.
3. Exchange of information to one another pursuant to this MOU is not considered a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552, or the California Public Records Act, Cal. Gov't Code §§ 6250, *et seq.*
4. Confidential Information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under federal and state laws. Confidential information may include: internal opinions, policy statements, memoranda, and recommendations of federal or state employees, including (but not limited to) investigators and supervisors; any records that would otherwise not be subject to disclosure under law as non-final, intra- or inter-agency documents; information or records covered by the attorney-client privilege and the attorney work-product privilege; personal information protected by any relevant law or regulation; and confidential business information and trade secrets.
5. Confidential Unemployment Compensation Information means any unemployment compensation information, as defined in 20 C.F.R. § 603.2(j), required to be kept confidential under 20 C.F.R. § 603.4 or its successor law or regulation.
6. When Confidential Information is exchanged it will not be released to the public, or to any third party, without the express permission of the agency providing that information, except as required by a court order, congressional or legislative inquiry, or law including, but not limited to, the Freedom of Information Act and the California Public Records Act, Cal. Gov't Code §§ 6250 *et seq.* Upon receipt of a public disclosure request by either agency seeking confidential information exchanged pursuant to this MOU, the agency that receives the request agrees to provide the other agency with notice of the request and an opportunity to pursue legal action to prevent the release of information.

7. When Confidential Information is exchanged, it shall be used and accessed only for the limited purposes of carrying out activities pursuant to this agreement as described herein. The information shall not be duplicated or re-disclosed without the express written consent or authority of the agency providing the information (hereinafter the “donor agency”), a court order, or as required by law, including the Freedom of Information Act or the California Public Records Act.
8. In the event that there is a public proceeding, such as a trial, in which certain records, such as confidential information, may be used or testimony of DOL/WHD’s employees sought, DOL/WHD requires that LWDA notify DOL/WHD.
9. In the event that there is a public proceeding, such as a trial, in which certain records, such as Confidential Information or Confidential Unemployment Compensation Information, may be used or testimony of LWDA employees sought, LWDA requires that DOL/WHD notify LWDA.
10. Should either party receive a request or subpoena that would, fairly construed, seek production of Confidential Information that it received pursuant to this MOU agreement, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information for at least ten (10) business days, and shall promptly notify the donor agency that such a request or subpoena has been received, so that the donor agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
11. Neither party shall have authority to waive any applicable privilege or doctrine on behalf of the other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one party be construed to apply to the other party.
12. The agencies will notify one another, through the agency POC identified in this MOU, upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of information exchanged under this agreement.
13. In addition to the requirements above, Confidential Unemployment Compensation Information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4, the California Unemployment Insurance Code (*e.g.*, Cal. Unemp. Ins. Code §§ 322, 1094, 1095), and any other applicable laws.
14. In addition to the requirements above, Confidential Information shared under this agreement may be exchanged only subject to (a) the applicable provisions of California law, including but not limited to, the Information Practices Act (Cal. Civ. Code §§ 1798, *et seq.*), the Evidence Code (*e.g.*, Cal. Evid. Code §§ 950 and 1040), the Labor Code (*e.g.*, Cal. Lab. Code §§ 6209, 6314, and 6322), and the Unemployment Insurance Code (*e.g.*, Cal. Unemp. Ins. Code §§ 322, 1094, 1095); and (b) the terms and conditions of any confidentiality agreements that may exist under which Confidential Information has been obtained by LWDA or by a subunit within LWDA.

15. The exchange of Confidential Information and Confidential Unemployment Compensation Information under this agreement is purely voluntary, and no obligation to exchange such information is created by this agreement.
16. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this MOU agreement remains the responsibility of the donor agency while in transit. The agencies agree to establish a communication protocol for notifying each agency's designated POC when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the donor agency if the information is not received as of the next business date following the agreed upon delivery date. Confidential data will be destroyed no later than thirty (30) days after its use and may be transmitted via secure FTP. Use includes the time period required for compliance with federal records retention periods. Confidential data will not be electronically mailed, unless encrypted using approved encryption standards.
17. To the extent permissible under federal and California law, each Party agrees to establish and maintain safeguards to protect the confidentiality of the information provided under to this MOU, by:
 - (i) requiring all staff designated to receive information subject to this agreement to sign the attached Acknowledgment of Confidentiality and shall maintain those Acknowledgments for so long as the Party receives information subject to this Agreement. Upon the request of the donor agency, the receiving agency shall provide copies of the signed Acknowledgments of Confidentiality that it maintains.
 - (ii) restricting access to such information to its officers, employees, contractors, and agents who have a need for such information in the performance of their official duties, and informing such persons of their responsibilities under the Agreement, except as otherwise provided in writing by the other agency;
 - (iii) establishing appropriate administrative, technical, and physical safeguards to ensure data security and the confidentiality of personally identifiable information; and
 - (iv) complying with any applicable breach notification laws and policies and procedures, including that:
 - a. a receiving agency notify a donor agency within one business day of learning of improper disclosure, release, breach or other access ("Security Incident") involving the donor agency's information;
 - b. the receiving agency shall be responsible for all costs incurred by the donor agency due to a Security Incident resulting from the receiving agency's failure to perform or negligent acts of its personnel, and resulting in an unauthorized disclosure, release, access, review, or destruction; or loss, theft or misuse of an information asset, including any regulatory fines, civil penalties, or damages. If the donor agency determines that notice to the individuals whose data has been

lost or breached is appropriate or required by applicable law, the receiving agency will bear any and all costs associated with the notice or any mitigation selected by the donor agency. These costs include, but are not limited to, staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach or loss of data.

18. At the conclusion of an investigation and prosecution by either party, the receiving agency will return any and all confidential information to the donor agency, except as required by law.
19. Liability of the U.S. Government is governed by the Federal Torts Claims Act.

XI. Dissemination of Factual Information

- The agencies agree to jointly disseminate outreach materials to the regulated community when appropriate. Any such dissemination may not be undertaken without prior notice and approval of each party.
- All public materials bearing the United States Department of Labor ("USDOL") or DOL/WHM name, logo, or seal must be approved in advance by USDOL. All public materials bearing the name, logo, or seal of LWDA or any of its agencies must be approved in advance by LWDA. Any such materials that include the opinions, results, findings and/or interpretations of data arising from the results of activities carried out under the Agreement shall state that they are the responsibility of the party carrying out the activity and do not necessarily represent the opinions, interpretation, or policy of the other partner.

XII. Resolution of Disagreements

- Disputes arising under this Agreement will be resolved informally by discussions between Agency Points of Contact, or other officials designated by each agency.

XIII. Period of Agreement

- This MOU agreement becomes effective upon the signing of both parties and will expire December 31, 2023. This agreement may be modified in writing by mutual consent of both agencies. The agreement may be cancelled by either party by giving thirty (30) days advance written notice prior to the date of termination. Renewal of the agreement may be accomplished by written agreement of the parties.

This agreement is effective as of the 6th day of May, 2022.

United States Department of Labor
Wage and Hour Division

State of California
Labor and Workforce Development Agency

By: _____
Richard Longo Date
Deputy West Regional Administrator

By: _____
Natalie Palugyai Date
California Secretary of Labor