

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION

AND

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

I. Purpose and Background

The purpose of this Memorandum of Understanding (MOU) between the United States Department of Labor, Occupational Safety and Health Administration (OSHA), and the United States Department of Labor, Wage and Hour Division (WHD), is to provide guidelines for coordination of activities between the two agencies.

Both OSHA and WHD recognize the value of establishing a collaborative partnership to protect the health and well-being of the Nation's workforce, ensuring the effectiveness of a complaint/referral system, and promoting the highest level of compliance with the laws enforced by each Agency.

II. Authority

OSHA and WHD enter into this MOU as authorized by their respective supporting legislation. Specifically:

- Section 2(b)(10) of the Occupational Safety and Health Act (29 USC 669(c)), which states that a purpose of the Act is to establish "an effective enforcement program." OSHA also enforces the whistleblower protection provisions of more than 20 federal statutes, as described below.
- WHD is authorized to administer and enforce programs under several statutes, including: the Fair Labor Standards Act, 29 U.S.C. § 211; the Davis Bacon and Related Acts, 29 CFR § 5.6; the McNamara O'Hara Service Contract Act, 29 U.S.C. § 6707; the Walsh-Healy Public Contracts Act, 41 U.S.C. § 6506; the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1862; the Immigration and Nationality Act, 29 CFR § 655.805, 29 CFR § 501.6, 29 CFR § 503.7; the Employee Polygraph Protection Act, 29 U.S.C. § 2004; and the Family and Medical Leave Act, 29 U.S.C. § 2616.

III. Agency Responsibilities

With the OSH Act, Congress created OSHA to ensure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. The OSH Act requires employers to furnish employment free from recognized hazards that are causing or are likely to

cause death or serious physical harm, and to comply with occupational safety and health standards issued under the Act. Additionally, OSHA has been delegated authority by the Secretary of Labor to enforce the whistleblower protection provisions of more than 20 federal statutes, in addition to the anti-retaliation provision of the OSH Act. The whistleblower statutes that OSHA enforces are listed in Secretary of Labor's Order 08-2020 (May 15, 2020) or any successor order.

WHD is responsible for administering and enforcing a wide range of labor laws, including the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA), the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), worker protections provided in several temporary nonimmigrant visa programs, and the prevailing wage requirements of the Davis-Bacon and Related Acts (DBRA) and the Service Contract Act (SCA). Additionally, as of February 3, 1997, the Secretary of Labor transferred to the WHD authority under Sections 8, 9, and 10 of the OSH Act for conducting inspections, issuing citations and assessing penalties, and developing and issuing compliance interpretations regarding field sanitation and temporary labor camp standards in the agricultural industry, with certain exceptions. The statutes that WHD enforces are listed in Secretary of Labor's Order 01-2014 (Dec. 19, 2014) or any successor order.

IV. Referrals and Other Coordinated Enforcement Activities

A. General

OSHA compliance officers conducting inspections and whistleblower investigators investigating complaints of retaliation sometimes obtain information about potential violations of the laws enforced by WHD. Similarly, WHD investigators conducting enforcement investigations sometimes obtain information about workplace safety and health conditions that may violate the OSH Act or retaliation in violation of the whistleblower protection statutes that OSHA enforces. The sharing of such information can enable both agencies to more efficiently enforce the laws and regulations under their respective authorities. Therefore, the two agencies agree to share such information pursuant to procedures described in this MOU.

In addition, to ensure efficient and effective sharing of information concerning potential violations, the two agencies agree to regularly assess their referral methods.

Finally, where appropriate and to the extent allowable under law, and where doing so would facilitate and not delay enforcement actions, the agencies may coordinate investigations and inspections.

B. Information Sharing and Referral Procedures

1. OSHA and WHD will share information they receive about possible violations of the other Agency's statutes. Such information sharing will take the form of a referral, as outlined in each Agency's internal processes.

If WHD discovers information relating to possible violations of OSHA standards, regulations, whistleblower protection statutes, or the general duty clause, WHD shall timely provide that information to OSHA by making a referral. If OSHA discovers information relating to a possible violation of the laws and regulations enforced by WHD, OSHA shall timely provide that information to WHD by making a referral.

2. WHD shall respond to referrals from OSHA, and OSHA shall respond to referrals from WHD, concerning potential violations of the other Agency's legal requirements, when appropriate, by conducting investigations and inspections in a timely manner.
3. WHD and OSHA will cooperate in developing and conducting training for Agency field staff as needed to ensure that valid referrals are made when potential violations are found.
4. WHD and OSHA shall exchange appropriate information relating to complaints, inspections, or investigations, and related matters to support the enforcement activities of the agencies.
5. WHD and OSHA shall utilize their current case databases (WHISARD (Wage and Hour Division enforcement) /OIS (OSHA safety and health enforcement)/OITSS-WB (OSHA whistleblower protection enforcement), respectively) or any successor systems, to record referrals made between the agencies. The Agency receiving a referral shall record in its database how it resolves the referral, and ensure that the record is maintained. If the Agency resolves the referral through an investigation or inspection, the Agency's database must reflect the outcome.

V. Outreach and Education

Where the parties mutually determine it to be appropriate, OSHA and WHD may conduct joint or complementary outreach, presentations, and distribution of compliance assistance materials to the regulated community, community organizations, and the public.

When indicated, OSHA and WHD may also share information between the agencies to improve the quality of interagency referrals. This sharing may take the form of web sessions or informational materials for inspectors and investigators.

All public materials bearing the OSHA name, logo, or seal must be approved in advance by OSHA. All public materials bearing the WHD name, logo, or seal must be approved in advance by WHD. Any such materials that include the opinions, results, findings, and/or interpretations of data arising from the result of activities of the party carrying out the

activity do not necessarily represent the opinions, interpretation, or policy of the other partner.

VI. State Programs

- A. OSHA and WHD Regional Administrators will work together to facilitate referrals of potential violations to WHD from the relevant state agencies in those states which operate their own occupational safety and health programs under a plan approved by OSHA under Section 18 of the OSH Act (State Plans).
- B. In those states with child labor laws that contain prohibitions against employment in hazardous occupations or other restrictions, the OSHA-approved State Plan Agency may refer potential violations of child labor laws to the appropriate State official responsible for enforcement of child labor regulations, in addition to referring them to WHD.
- C. OSHA will encourage State Plans to respond to referrals from WHD and state agencies concerning potential violations of the states' occupational safety and health standards or regulations by conducting investigations in a timely manner.
- D. OSHA will encourage State Plans to participate in all training and information-sharing activities established under this MOU. Regional Administrators from OSHA and WHD will coordinate their participation in such activities.

VII. Implementation

Under the terms of this agreement, each Agency will:

- A. Make this MOU available to all field personnel;
- B. Develop and distribute to all field personnel guidance on this MOU, taking into consideration the appropriate lines of communication between WHD, OSHA, and OSHA State Plans;
- C. Ensure that all field personnel are provided with information and training concerning the types of issues that will be referred, including the requirements of the OSH Act, the whistleblower protection provisions of the more than 20 federal statutes enforced by OSHA, and the FLSA, FMLA, MSPA, SCA, DBRA, INA and their implementing regulations;
- D. Submit all referrals generated by compliance officers/investigators to the Area/District Director or delegated representative, who will then forward the referral to the other Agency;
- E. Take appropriate action on referrals according to each Agency's prioritization process;

- F. If requested, transmit to the other Agency the results of any inspection or investigation conducted in response to a referral from that Agency (in accordance with the agencies' sharing protocols); and
- G. Conduct periodic regional meetings, as necessary, to report on the progress of actions taken on the other Agency's referrals and evaluate the system.

VIII. Effect of Agreement

- A. This 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 obligation.
- B. Nothing in this agreement is intended to diminish or otherwise affect the authority of either party to implement its respective statutory functions, including enforcement functions.
- C. This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the parties. This agreement is not intended to confer any right upon any private person or other third party.
- D. Nothing in this agreement will be interpreted as limiting, superseding, or otherwise affecting the parties' normal operations. This agreement also does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
- E. OSHA and WHD each agree to notify the other Agency immediately upon receipt of any legal demand for access to any information, in any form, which one Agency has transferred to the other pursuant to this agreement. In the event that it receives a request under the Freedom of Information Act (FOIA) for such records, each Agency agrees to consult with the other to formulate a response consistent with the requirements of the FOIA. It is anticipated that consistent with the FOIA, any request for records will be referred to the Agency that originally held the records for processing and a release determination.
- F. It is understood that the sharing of information between the agencies is not considered a public disclosure under the Freedom of Information Act.

IX. Contacts

The agencies will designate a Point of Contact (POC) at the national office level, responsible for coordinating enforcement and outreach activities, and will notify each other in the event of any changes with respect to their designated POCs. The POCs will meet annually to review coordination procedures and areas of mutual concern.

X. Resolution of Disagreements

Disputes arising under this Agreement will be resolved informally by discussions between Agency POCs, or other officials designated by each party.

XI. Period of Agreement

This agreement becomes effective upon the signing of both parties and will expire 5 years from the effective date. This agreement may be modified in writing by mutual consent of both parties. The agreement may be cancelled by either party by giving thirty (30) days advance written notice prior to the date of cancellation. Renewal of the agreement may be accomplished by written agreement of the parties.

This agreement is effective as of the 4th day of May, 2023.

United States Department of Labor
Occupational Safety and Health Administration

United States Department of Labor
Wage and Hour Division

By: _____
Douglas L. Parker
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By: _____
Jessica Looman
Principal Deputy Administrator