

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

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

AND

**STATE OF HAWAI'I, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,
WAGE STANDARDS DIVISION**

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as "DOL/WHHD" or "DOL"), and the State of Hawai'i, Department of Labor and Industrial Relations, Wage Standards Division (hereinafter referred to as "DLIR/WSD") (collectively referred to as "the agencies" or "the parties") enter into this Memorandum of Understanding ("MOU") to establish a collaborative relationship to promote compliance with laws of common concern in the State of Hawai'i.

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.

DLIR/WSD is responsible for administering the wage and hour laws pursuant to Chapter 387, Hawaii Revised Statutes ("HRS"), payment of wages and other compensation law pursuant to Chapter 388, HRS, wages and hours of employees on public works law pursuant to Chapter 104, HRS, child labor law pursuant to Chapter 390, HRS, and family leave law pursuant to Chapter 398, HRS.

The agencies enter into this MOU with good faith intentions to more effectively and efficiently communicate and cooperate on areas of common interest, including outreach and education, sharing training materials, and, where appropriate, in conducting joint investigations and exchanging information. This MOU is intended to memorialize this understanding between DOL/WHHD and DLIR/WSD. This MOU is a voluntary agreement that expresses the good-faith intentions of DOL/WHHD and DLIR/WSD. This MOU is not intended to be legally binding, does not create any contractual obligations, and it is not enforceable by any party. This MOU does not obligate, and will not result in, an exchange of funds, personnel, property, services, or any kind of financial commitment.

I. Purpose

The purpose of this MOU is to establish a collaborative relationship between the agencies regarding enforcement of laws administered by DOL/WHHD and DLIR/WSD in the State of Hawai'i.

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

1. The agencies agree to coordinate, conduct joint outreach presentations, and prepare and distribute publications, when appropriate, of common concern for stakeholders.

2. The agencies agree to work with each other to provide a side-by-side comparison of laws having overlapping provisions and jurisdictions.

3. All use of materials bearing the DOL or DOL/WHD name, logo, or seal must be approved in advance by DOL. Materials, as used in this section III. Outreach and Education, includes any information in written, printed, electronic, video, or other similar form.

4. All use of materials bearing the DLIR/WSD name, logo, or seal must be approved in advance by DLIR/WSD. Materials, as used in this section III. Outreach and Education, includes any information in written, printed, electronic, video, or other similar form.

5. If DOL/WHD includes opinions or interpretations in materials regarding laws enforced by DLIR/WSD, it shall include a statement in the materials that the opinions and interpretations are those of DOL/WHD and not DLIR/WSD.

6. If DLIR/WSD includes opinions or interpretations in materials regarding laws enforced by DOL/WHD, it shall include a statement in the materials that the opinions and interpretations are those of DLIR/WSD and not DOL/WHD.

7. Any such materials that include the opinions, results, findings and/or interpretations of data arising from the results of activities carried out under the MOU (collectively "opinions") shall state that they are the opinions of the party carrying out the activity and do not necessarily represent the opinions of the other partner.

IV. Training

The agencies agree to cross train investigators and other staff no less than once per calendar year, subject to agency resources and any applicable legal requirements. Joint training will be conducted to educate staff members of both agencies regarding the laws and regulations enforced and to discuss issues of common concern.

V. Exchange of Information

1. The agencies agree to exchange information on and will be available to discuss

Hawai'i and Federal laws and regulations of common concern and interest, to the extent permissible. Notwithstanding any other provision in this MOU, each agency has the sole and complete discretion over what information, including but not limited to Confidential Information, it may provide to the other agency.

2. The agencies do not consider information provided to each other pursuant to this MOU as a public disclosure under the Freedom of Information Act, 5 U.S.C.552.
3. To the extent permitted by law, the agencies understand that in order to effectuate the purposes and provisions of this MOU, it may 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 and enforcement efforts. 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 recognize the importance of being able to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or make a public disclosure.
4. It is the policy of DOL/WHD and DLIR/WSD 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 the DOL/WHD's and DLIR/WSD's own statutory obligations and enforcement efforts. It is DOL/WHD's and DLIR/WSD's view that an exchange of information in cases in which both entities are proceeding on basically the same matter is to our mutual benefit. There may be a need for DOL/WHD and DLIR to provide information to other law enforcement bodies without making a public disclosure.
5. In consideration of these concerns, and subject to any applicable laws and regulations regarding the handling of such information, the agencies agree as follows:
6. Confidential Information
 - a. Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or to other unauthorized persons under federal and state laws. Confidential information may include: the identity of persons who have given information to the agencies in confidence or under circumstances in which confidentiality can be implied; any employee statements in enforcement files that were obtained under these conditions; 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; individually identifiable health information; and confidential business information and trade secrets.

b. The agencies may enter into a separate agreement if confidential information is exchanged.

c. 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 law including, but not limited to, the Freedom of Information Act ("FOIA") and the State of Hawai'i's Uniform Information Practices Act ("UIPA"). Upon receipt of a public disclosure request, the agencies agree to provide each other with notice of the request to allow the affected party the opportunity to pursue legal action to prevent the release of information.

d. When confidential information is exchanged, it shall be used and accessed only for the limited purposes of carrying out activities pursuant to this MOU 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.

e. To the extent practicable, DOL/WHD agrees to notify DLIR/WSD if there is a public proceeding such as a trial in which certain records containing confidential information may be used or the testimony of DLIR/WSD's employees is sought.

f. To the extent practicable, DLIR/WSD agrees to notify DOL/WHD if there is a public proceeding such as a trial in which certain records containing confidential information may be used or the testimony of DOL/WHD's employees is sought.

g. Should either party receive a request or subpoena that would, if fairly construed, seek production of confidential information that it received pursuant to this MOU, the party receiving such a request or subpoena shall take reasonable measures, which may include, but not be limited to asserting the common interest privilege, to preclude or restrict the production of such information for ten (10) business days, and shall promptly notify the donor agency that such a request or subpoena has been received so the donor agency may file appropriate objections or motions or take any other reasonable and customary steps to preclude or condition the production of such information.

h. Neither party shall have the 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.

i. The receiving agency will notify the donor agency through a Point of Contact ("POC") identified herein upon commencement of litigation, a hearing, or

other proceeding that may involve the release or introduction of written evidence. This includes instances where testimony is based on information received from the donor agency and exchanged under this MOU.

j. 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. The 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 must be transmitted using National Institute of Standards and Technology (NIST) approved encryption standards via secure File Transfer Protocol (FTP). Confidential data will be destroyed no later than thirty (30) days after its use. The term "use" as defined herein includes the time through completion of the enforcement of laws in this MOU through the appeals process and the time required for compliance with federal and state records retention periods, as appropriate.

k. In the event that the agency receiving the information experiences a security incident that results in the suspected or confirmed inadvertent disclosure of the data received from the donor agency pursuant to this MOU, the agency experiencing the incident will send formal written electronic notification to the donor agency's designated POC within 3 days after detection of the incident. The written electronic notification shall describe the security incident in detail including what data received from the donor agency pursuant to this MOU may have been inadvertently disclosed.

l. At the conclusion of the applicable investigation and/or prosecution, the receiving agency will return any and all confidential information to the donor agency, except as required by law.

7. Liability of the U.S. government is governed by the Federal Torts Claims Act.

VI. Enforcement

To the extent allowed by law and policy, and where appropriate:

1. The agencies may conduct joint investigations annually in the State of Hawai'i.
2. The agencies may coordinate their respective enforcement activities as well as assist each other with enforcement.

3. The agencies may establish a methodology for exchanging investigative leads, complaints and referrals of possible violations.

4. The agencies may exchange information (statistical data) on incidents of violations in specific industries and geographic areas.

VII. Limitations of the MOU

1. This MOU 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.

2. By entering into this MOU, the agencies do not imply an endorsement or promotion by either agency of the policies, programs, or services of the other.

3. Nothing in this MOU is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory or regulatory functions.

4. This MOU is not intended to be legally binding, does not create any contractual obligations, does not confer any rights on any entity or private person and is not enforceable by any party or third-party beneficiary.

5. This MOU is not intended to confer any rights against the United States, the State of Hawai'i, their agencies, their officers or upon any private person.

6. Nothing in this MOU 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 applicable law or regulation, including any Executive Order.

7. This MOU does not limit or restrict the parties from participating in similar activities or arrangements with other entities.

8. This agreement will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, and any other applicable federal laws and state laws in the State of Hawai'i.

9. This MOU contains all the terms and conditions agreed upon by the agencies concerning the subject matter of the MOU. No other understandings, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or be binding upon the agencies.

VIII. Points of Contact (“POCs”)

The agencies designate the following individuals as POCs who are responsible for coordinating the partnership activities and who will meet annually to review areas of mutual concern. The agencies will provide notification in the event the POCs change for any reason.

DOL/WHD – HONOLULU DISTRICT OFFICE

Terence Trotter, District Director

Phone: (808) 664-8460

Email: trotter.terence@dol.gov

DOL/WHD – HONOLULU DISTRICT OFFICE

Min Kirk, Assistant District Director

Phone: (808) 664-8461

Email: kirk.min@dol.gov

DOL/WHD – HONOLULU DISTRICT OFFICE

Herbert Lee, Community Outreach and Resource Planning Specialist

Phone: (808) 664-8465

Email: lee.herbert@dol.gov

STATE OF HAWAI‘I DLIR – WAGE STANDARDS DIVISION

Sheryl Lee, Administrator

Phone: (808) 586-8771

Email: sheryl.h.lee@hawaii.gov

STATE OF HAWAI‘I DLIR – WAGE STANDARDS DIVISION

Mari Imamura, Technical Support and Services Staff Supervisor

Phone: (808) 586-8806

Email: mari.m.imamura@hawaii.gov

IX. Previous Agreements

This MOU replaces and supersedes any previous MOU between the parties.

X. Resolution of Disagreements


Disputes arising under this MOU will be resolved informally by discussions between Agency Points of Contact or other officials designated by each agency at the time of the event.

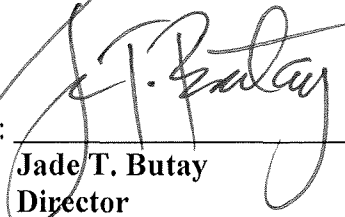
XI. Period of Agreement

This MOU will become effective on the date the last person signs the MOU and will expire on May 31, 2028. This MOU may be renewed or amended upon written agreement of the parties and may be terminated at any time by either party upon 30 days prior written notice.

**United States Department of Labor
Wage and Hour Division**

**State of Hawai'i Department of Labor
and Industrial Relations,
Wage Standards Division**

By:  6/28/23
Richard Longo Date
West Regional Deputy Administrator
DOL-Wage and Hour Division

By:  6/28/23
Jade T. Butay Date
Director
State of Hawai'i Department of Labor
and Industrial Relations