

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

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

AND

**NEW YORK STATE DEPARTMENT OF LABOR, DIVISION OF IMMIGRANT
POLICIES AND AFFAIRS**

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as “DOL/WHD” or “Department”), and the **NEW YORK STATE DEPARTMENT OF LABOR, DIVISION OF IMMIGRANT POLICIES AND AFFAIRS** (hereinafter referred to as **NYS DIPA**) (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 **NEW YORK**.

The agencies are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest, including cross training staff, providing employers and employees with compliance assistance information towards the goal of protecting the wages, safety, and health of America’s workforce, sharing training materials and sharing information as appropriate.

THEREFORE, IT IS MUTUALLY AGREED THAT:

This memorandum of understanding (MOU) agreement is intended to memorialize this understanding between DOL/WHD and **NYS DIPA**. This MOU is a voluntary agreement that expresses the good-faith intentions of DOL/WHD and **NYS DIPA**; 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, or any kind of financial commitment. This MOU agreement outlines procedures to be followed by both DOL/WHD and **NYS DIPA** in working together to address the need **for sharing information, cross training staff, and conducting joint outreach between DOL/WHD and NYS DIPA in order to better serve the employees, employers, and other stakeholders in the State of New York.**

Agency Responsibilities

DOL/WHD enforces the Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. DOL/WHD 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/WHD 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.

NYS DIPA is responsible for processing H-2A and H-2B employer job applications at the state level and ensuring the terms and conditions of the contract comply with NYS Labor Law. DIPA provides education and compliance services to NYS-based employers as well as outreach to migrant and seasonal farm workers (MSFWs), so they are aware of the employment and labor law protections available in NYS. DIPA also provides outreach to immigrant communities, screens potential victims of trafficking for U or T visas and is responsible for compliance with Language Access requirements at the NYS Department of Labor. NYS DIPA also includes the NY State Monitor Advocate whose responsibilities include equitable services for migrant and seasonal farmworkers, including review of complaints, review of significant/special circumstance offices, and education/outreach to the NFJP grantee, advocates, staff, agricultural employers and farmworkers.

With the specific and mutual goals of providing clear, accurate, and easy-to-access outreach to employers, employees, and other stakeholders on child labor, agricultural employment, FLC and H-2ALC registration, safe housing and transportation, and enhancing enforcement by sharing information, the parties agree to enter into this agreement.

I. Purpose

The purpose of the MOU is to maximize and improve the enforcement of the laws administered by DOL/WHD and supported by **the work of NYS DIPA**. This agreement will also encourage greater coordination between the agencies through coordinated sharing of information, training, and outreach.

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 coordinate, conduct joint outreach presentations, and prepare and distribute publications, when appropriate, for the regulated community of common concern.
- The agencies agree to work with each other to provide a side-by-side comparison of laws with overlapping provisions and jurisdiction.
- The agencies agree to provide a hyperlink on each agency's website linking users directly to the outreach materials in areas of mutual jurisdiction and concern.
- The agencies agree to jointly disseminate materials and participate in outreach events 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 NYS DIPA name, logo, or seal must be approved in advance by NYS DIPA.

IV. Points of Contact (POCs)

- The agencies designate the following POCs responsible for coordinating the partnership activities and will meet 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:

LIST FORMAL AND INFORMAL POCs FOR EACH ENTITY, PROVIDING NAMES AND TITLES, PHONE NUMBERS, EMAIL ADDRESSES, AND PHYSICAL ADDRESSES.

For the Wage & Hour Division

Albany District Office:

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Nano Bustamante, Community Outreach & Resource Planning Specialist
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New York City District Office:
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Manuel Garcia, Community Outreach & Resource Planning Specialist
US DOL-WHD
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For NYS DIPA:

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Melissa Buckley, Acting Assistant Director
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Caylin Gwise, DIPA and FLCU Supervisor (WNY/CNY)
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Robyn Fellrath, Long Island Commissioner's Regional Representative
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Hauppauge, NY 11788
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Robyn.Fellrath@labor.ny.gov

NYS Monitor Advocate:
Belen Ledezma

State Office Campus, Building 12, Room 570
Albany, NY 12240
518-915-3059
Belen.Ledezma@labor.ny.gov

V. Enforcement

Where appropriate and to the extent allowable under law,

- The agencies may coordinate their respective activities and assist each other, where appropriate and to the extent allowable under their respective programs.
- The agencies will make referrals of potential matters under each other's jurisdiction, where appropriate. Regular updates shall be provided to the extent practicable, in accordance with each agency's respective information sharing protocols.
- To maintain enforcement credibility with common stakeholders, the source and specifics of referrals will not be shared by agencies with employers, workers, or advocates.

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.

VII. 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 about the laws and regulations enforced by both, and to discuss issues of common concern.
- 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, the State of New York, their agencies, or their 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 New York State Freedom of Information Law, New York State Personal Privacy Protection 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 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 agreement 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.

It is the policy of DOL/WHD and NYS DIPA 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 NYS DIPA's own statutory obligations and enforcement efforts. It is DOL/WHD's and NYS DIPA'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 is a need for DOL/WHD and NYS DIPA to provide information to other law enforcement bodies without 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. The agencies agree to 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.
4. 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, the Public Records Act, Chapter 239.001 NRS, and the New York Freedom of Information Law. Upon receipt of a public disclosure request, **NYS DIPA** agrees to provide DOL/ WHD with notice of the request and an opportunity to pursue legal action to prevent the release of information.
5. 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 and New York Freedom of Information Law.
6. 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: 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.

7. 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 **NYS DIPA** notify DOL/WHD.
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 **NYS DIPA** employees sought, **NYS DIPA** requires that DOL/WHD notify **NYS DIPA**.
9. Should either party receive a request or subpoena that would, fairly construed, seek production of privileged 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 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.
10. 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.
11. 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.
12. 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.
13. For information security purposes, after an agency receives information from the donor agency, the donor agency retains no responsibility for any security incidents, inadvertent

disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.

14. However, in the event that the agency receiving the information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this MOU agreement, the agency experiencing the incident or disaster will send formal written electronic notification to the donor agency's designated contact person immediately within 3 days after detection of the incident or disaster. The written electronic notification will describe the security incident or disaster in detail including what data exchanged pursuant to this MOU agreement may have been inadvertently disclosed.
15. 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, including the Records Retention Act.
16. Liability of the U.S. Government is governed by the Federal Torts Claims Act.

XI. Dissemination of Factual Information

- All public materials bearing the United States Department of Labor ("USDOL") or DOL/WHD name, logo, or seal must be approved in advance by USDOL. 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 3 years from the effective date. 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 5 day of July, 2022.

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

**New York State Department of Labor
Division of Immigrant Policies and
Affairs**

By: Mark H. Watson Jr. 7/5/22
Date

Mark H. Watson Jr.
Regional Administrator

By: Scott Melvin 6/22/22
Date

Scott Melvin
Executive Deputy Commissioner