

**Addendum to the Revised Memorandum of Understanding between the Departments of
Homeland Security and Labor Concerning Enforcement Activities at Worksites**

I. Purpose

- A. Pursuant to Section V(A) of the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (the MOU) dated December 7, 2011, the Departments, in an effort to increase the effectiveness of the MOU, agree to the modifications of the MOU contained herein.
- B. This Addendum recognizes the importance of interagency coordination between law enforcement authorities when enforcing labor, employment, and immigration laws relating to the worksite and the need for these authorities to work together to ensure that respective civil worksite enforcement activities do not conflict and are not manipulated by third parties while advancing the respective missions of each agency.
- C. The Department of Homeland Security (DHS), through its principal component, U.S. Immigration and Customs Enforcement (ICE); Department of Labor (DOL); the Equal Employment Opportunity Commission (EEOC); and the National Labor Relations Board (NLRB) (collectively "the parties"), are therefore entering into this Addendum to the MOU. The purpose of this Addendum is to set forth ways in which the EEOC and the NLRB will work together with DOL and DHS/ICE, the original parties to the MOU, to ensure that the civil worksite enforcement activities of the EEOC and the NLRB do not conflict with ICE's workforce enforcement activities, and to advance the respective missions of each agency. This Addendum further seeks to facilitate dialogue among the parties.

II. The Worksite Enforcement Activities and Authorities of the EEOC and the NLRB

- A. The worksite enforcement activities of the EEOC include the authority to enforce Title VII of the Civil Rights Act of 1964 (race, color, sex, national origin, and religion), the Equal Pay Act of 1963 (sex), Title I and Title V of the Americans with Disabilities Act of 1990 (disability), the Age Discrimination in Employment Act of 1967 (age 40 and older), and Title II of the Genetic Information Nondiscrimination Act of 2008 (acquisition or use of genetic information), as well as the authority to enforce the provisions of these laws prohibiting an employer from engaging in retaliation against an employee or job applicant for opposing practices believed to be discriminatory or participating in an employment discrimination proceeding.
- B. The worksite enforcement activities of the NLRB include the authority to enforce the National Labor Relations Act (NLRA), which protects employees' rights to join together, with or without the assistance of a labor organization, to seek better pay or working conditions from their employer through collective bargaining or other lawful means. Workers employed by employers under the NLRA's jurisdiction are guaranteed the basic associational and collective bargaining rights set forth in Section III(A) of the MOU, as well as the right to be free from retaliation by their employer or labor union, if one is involved. The NLRA also prohibits an employer from engaging in retaliation against an employee or job

applicant for invoking the NLRB's processes or seeking redress of actual or perceived violations of the NLRA.

III. Agreement of the Parties

- A. Consistent with their respective jurisdictions, the EEOC and the NLRB agree to the same commitments and exchanges as agreed to by DOL under Section IV of the MOU. DHS and ICE retain the same commitments and exchanges as agreed to in the MOU, but where their commitments and exchanges apply with respect to DOL in the MOU, those commitments and exchanges shall apply with respect to the EEOC and the NLRB as well. In the case of a conflict covered by Section IV(A) of the MOU and upon request by ICE in a specific matter, the relevant agency would respond to ICE's inquiry as to whether the specific conflict has ended. Except as specified in Section III(D) of this Addendum, DOL will retain the same commitments and exchanges as described in the MOU.
- B. Section IV(C) of the MOU is hereby modified to read:
Notwithstanding paragraph A, ICE may continue to engage in worksite enforcement activities at a worksite that is the subject of the investigation of a labor dispute if -
- The Director of ICE, Deputy Director of ICE, or their designee determines the enforcement activity is independently necessary to advance an investigation relating to national security, the protection of critical infrastructure (e.g., ports, power plants, or defense facilities.), or a federal crime other than a violation relating to unauthorized employment; or
 - The enforcement activity is directed by the Secretary of Homeland Security or the Secretary's designee.
- C. Section IV(D) of the MOU is hereby modified to read:
In those instances in which ICE decides to engage in a worksite enforcement activity under Section IV(C) of the MOU, ICE agrees to provide notice to the relevant labor agency, unless the Director of ICE, Deputy Director of ICE, or their designee determines that notice would violate federal law or would otherwise compromise the investigation. The parties also agree to exchange points of contact in these instances in order to better coordinate the overlapping investigations. To the extent practicable, ICE agrees to make available for interview to DOL, the EEOC, or the NLRB any person ICE detains for removal through a worksite enforcement activity, provided the interview is consistent with federal and state law, would not compromise an ongoing ICE investigation or prosecution, and is approved by the relevant U.S. Attorney's Office (when applicable). DOL, the EEOC, and the NLRB agree that any labor agency interview conducted under this paragraph shall be at the labor agency's expense and shall not unreasonably interfere with or delay removal proceedings except as provided in Section IV(F) of the MOU.
- D. DOL generally will coordinate with the EEOC and NLRB in the deconfliction of investigations with ICE as set forth in Section IV, paragraphs A, B, and D of the MOU. The EEOC and NLRB will participate in the Worksite Enforcement Coordination Committee referenced in Section IV(H) of the MOU.

- E. All information shared pursuant to the MOU or this Addendum among the parties regarding coordination and deconfliction of their civil enforcement activities shall be treated as confidential, and the act of sharing information shall not constitute a waiver of any otherwise applicable privilege or protection from discovery or other disclosure.
- F. Information obtained pursuant to the MOU, this Addendum, or any process established to implement the MOU or Addendum, is intended only for use and access by the receiving agencies for the limited purpose of carrying out activities pursuant to the MOU or this Addendum, or as required by applicable laws and regulations. Except as set forth below, such information may not be used or disclosed by the receiving party for other purposes outside of the MOU, this Addendum, or any process established to implement the MOU or Addendum, to other authorities, or any third parties unless the producing party expressly approves such use or disclosure in writing. The information shall not be disclosed externally without a federal court order, a formal request from a federal oversight entity, or the supplying agency's written authorization stating that there is no basis for withholding it, including but not limited to, the confidentiality requirements of the Privacy Act, the Trade Secrets Act, Sections 706(b) and 709(e) of Title VII, Section 107(a) of the ADA, and Section 207(a) of GINA. When responding to a federal court order, a producing party shall notify and confer with the supplying party prior to duplicating or disclosing information.
- G. Nothing in this Addendum is intended to preclude the internal use of information by the receiving party to the extent that there is an obligation to do so under applicable laws and regulations.

IV. Effective Date

- A. Effective as of the date of the latest signature below, this Addendum modifies and is fully incorporated into the MOU and supersedes any previous term inconsistent with the terms of this Addendum. To the extent that this Addendum contradicts the MOU, this Addendum will be controlling. All terms previously agreed to and not contradicted by this Addendum remain in effect. Modification of this Addendum shall be in writing and upon approval of all parties to this Addendum.
- B. This Addendum is valid until rescinded by EEOC, NLRB, DOL, and ICE. If only one party rescinds the agreement, it shall remain effective as to the others.
- C. The MOU and this Addendum reflect the full understanding of the parties on this subject and are intended to be read in conjunction with each other and represent one understanding. The MOU may not be further modified without the parties' consent. The parties may unilaterally rescind their participation in this Addendum but only upon written notice to all parties provided at least 30 days in advance.
- D. The MOU, to include this Addendum and all future modifications, is an agreement among the parties, and does not create or confer any right or benefit on any other person or party, public or private. Nothing in this Addendum or its implementation is intended to restrict the legal authority of the parties in any way.

For the Department of Homeland Security, U.S. Immigration and Customs Enforcement



Sarah R. Saldaña
Director

Date: **MAY 05 2016**

For the Department of Labor



M. Patricia Smith
Solicitor of Labor

Date: **5/6/2016**

For the U.S. Equal Employment Opportunity Commission



Jenny R. Yang
Chair

Date: **may 6, 2016**

For the National Labor Relations Board



Richard F. Griffin, Jr.
General Counsel

Date: **May 3, 2016**