

## **Common Interest Agreement between the US Department of Labor, Wage and Hour Division and the State of Indiana Department of Workforce Development**

This Agreement is made and entered into by and between **the United States Department of Labor's Wage and Hour Division** (hereinafter referred to as "WHD" or "Department"), and **Indiana Department of Workforce Development** (hereinafter referred to as DWD) (collectively referred to as "the agencies" or "the parties").

With the specific and mutual goals of providing clear, accurate, and easy-to-access outreach to employers, employees, and other stakeholders, and of sharing resources and enhancing enforcement by conducting coordinated investigations and sharing information consistent with applicable law, the parties agree to enter into this partnership.

### **THEREFORE, IT IS MUTUALLY AGREED THAT:**

#### **Purpose**

The agencies recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern among the regulated community in the State of Indiana. 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 and, conducting coordinated investigations, and sharing information as appropriate.

This Agreement is intended to memorialize this understanding between WHD and DWD. This Agreement is a voluntary Agreement that expresses the good-faith intentions of WHD and DWD and is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. This Agreement does not obligate and will not result in an exchange of funds, personnel, property, services, or any kind of financial commitment. This Agreement outlines procedures to be followed by both WHD and DWD in working together to address the need for information sharing, coordinated investigations, cross training staff, and outreach between WHD and DWD.

#### **Agency Responsibilities**

WHD is responsible for administering and enforcing a wide range of federal labor laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary visa programs, and the prevailing wage requirements of the Davis-Bacon and Related Acts and the Service Contract Act. Nothing in this Agreement limits the WHD's enforcement of these and other statutes. Wage and Hour Midwest Regional Office has jurisdiction over the State of Indiana.

DWD is responsible for administering and enforcing state and federal law in Indiana relating to unemployment insurance, job placement and training, workplace safety, workers' compensation, child labor, and wage theft, among others. Specific to this Agreement, DWD's WorkOne Centers provide services to both businesses and the labor force of Indiana through the delivery of various state and federally funded employment and training services (i.e. customized staff training, On-the-Job Training, as well as employees through career counseling, job search skill development and assessment, academic skill testing, job fairs, etc.). They also provide aid to migrant, seasonal farm workers and services to H-2A employers and employees.

## **Contacts**

1. The agencies will designate a contact person (POC) responsible for coordinating the partnership activities.
2. The agencies will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of the partnership.

### **POC for DWD:**

State Monitor Advocate- Janet Garcia Hobbs

Phone: 765-416-2158

Email: [Jgarciahobbs@dwd.in.gov](mailto:Jgarciahobbs@dwd.in.gov)

### **POC for WHD:**

Community Outreach & Resource Planning Specialist- Esthela Sandoval

Phone: 317-808-7914

Email: [Sandoval.Esthela@dol.gov](mailto:Sandoval.Esthela@dol.gov)

## **Outreach and Education**

Where appropriate and to the extent allowable under law,

3. The agencies may conduct joint outreach presentations, and prepare and distribute publications, when appropriate, for the regulated community of common concern.
4. The agencies agree to jointly disseminate outreach materials to the regulated community, when appropriate.
5. All materials bearing the DOL or WHD name, logo, or seal must be approved in advance by DOL.

## **Enforcement**

6. The agencies will coordinate their respective enforcement activities and assist each other with enforcement.
7. The agencies may make referrals of potential violations of each other's statutes, where appropriate.
8. The agencies will share relevant investigative findings from those referrals in order to fulfill requirements of state and federal law, where appropriate and to the extent allowable under law.

## **Information**

9. The agencies agree to exchange information on laws and regulations of common concern to the agencies, to the extent practicable.
10. The agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law or policy.

## **Effect of Agreement**

11. 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 obligations.
12. By entering into this partnership, the agencies do not imply an endorsement or promotion by either party of the policies, programs, or services of the other.
13. Nothing in this Agreement is intended to diminish or otherwise affect the authority of either agency to implement its statutory functions.

14. 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 rights on any private person or other third party.
15. 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 arrangement with other entities.
16. 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 and Indiana state laws.
17. Liability of the U.S. Government is governed by the Federal Torts Claims Act.

### **Exchange of Information**

Subject to the foregoing constraints:

18. It's the policy of WHD and DWD 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 WHD's and DWD's own statutory obligations and enforcement efforts. It is agencies' 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 the government to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or making a public disclosure.
19. For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this 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 contact person 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.
20. A "Security Incident" occurs when a party has reason to believe that there either was or may have been unauthorized access to, or damage caused to, or theft of the data shared under this Agreement. A Security Incident includes, but is not limited, to breaches of confidentiality where the use or disclosure of the data that is not permitted by this Agreement or any use or disclosure of the data that is not permitted by applicable federal and state laws or regulations occurs. If a party has reason to believe that a Security Incident has occurred, then:
  - A. Reporting of Security Incident to DWD: WHD shall undertake appropriate mitigating actions as prescribed by applicable federal and state laws and regulations, including providing notice, where required, to the victims, state authorities, and federal authorities.
  - B. WHD shall provide prompt notice of any potential breach to DWD in the manner described below:
    - i. A Security Incident shall be reported by WHD to the Information Security Analyst Senior by both calling (317) 232-7596 within two (2) hours of becoming aware of the Security Incident and in electronic form to PrivacyandSecurityOfficers@dwd.in.gov and stierney@che.in.gov within twenty-four (24) hours of becoming aware of the Security Incident.

- ii. If WHD is unable to reach the DWD Information Security Analyst Senior at the above phone number, then WHD shall report the Security Incident to DWD's Chief Information Officer by calling (317) 234-8371 within two (2) hours of becoming aware of the Security Incident.
    - iii. In the event a Security Incident is discovered outside of normal business hours, leaving a voice message at the above-listed telephone numbers shall be considered sufficient oral notification; however, WHD shall also complete notification by electronic form to [PrivacyandSecurityOfficers@dwd.in.gov](mailto:PrivacyandSecurityOfficers@dwd.in.gov) and [stierney@che.in.gov](mailto:stierney@che.in.gov) within twenty-four (24) hours of becoming aware of the Security Incident.
  - C. Reporting of Security Incident to WHD: DWD shall undertake appropriate mitigating actions as prescribed by applicable federal and state laws and regulations, including providing notice, where required, to the victims, state authorities, and federal authorities.
  - D. DWD shall provide prompt notice of any potential breach to WHD in the manner described below:
    - i. A Security Incident shall be reported by DWD to the Community Outreach and Resource Planning Specialist- Esthela Sandoval by both calling 317-808-7914 within two (2) hours of becoming aware of the Security Incident and in electronic form to [Sandoval.esthela@dol.gov](mailto:Sandoval.esthela@dol.gov) within twenty-four (24) hours of becoming aware of the Security Incident.
    - ii. If DWD is unable to reach the Community Outreach and Resource Planning Specialist at the above phone number, then DWD shall report the Security Incident to WHD's District Director by calling 317-808-7909 within two (2) hours of becoming aware of the Security Incident.
    - iii. In the event a Security Incident is discovered outside of normal business hours, leaving a voice message at the above-listed telephone numbers shall be considered sufficient oral notification; however, DWD shall also complete notification by electronic form to [Sandoval.esthela@dol.gov](mailto:Sandoval.esthela@dol.gov) within twenty-four (24) hours of becoming aware of the Security Incident.
  - E. The below format should be used when reporting the Security Incident electronically:
    - **Name of Reporting Entity**  
Incident # (number assigned by reporting entity)
    - **Type of Incident**  
Date and time of report (date and time incident was initially reported)  
Date and time of Security Incident (date and time incident occurred)  
Time potential breach was identified
    - **Name and Title of Person Reporting Incident**  
Contact information (of person reporting incident)
    - **Summary of Incident**  
(Include pertinent information regarding the potential security breach)

- **Description of Personally Identifiable Information Involved**  
(Include number of participant records involved)
  - **Action Taken**  
Name of person(s) conducting preliminary investigation  
Contact information (of individual(s) responsible for issue analysis)  
Date investigation started  
Action(s) taken (include dates, times, and names of agencies notified of the incident)
  - **Conclusion**  
Measure taken to address issue and prevent any reoccurrences
21. If the Security Incident persists, the Parties shall communicate at least every twelve (12) hours until the Security Incident ends.
  22. 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.
  23. Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. § 552.
  24. Confidential information means information that may be exempt from disclosure to the public or other unauthorized persons under state and federal statutes. Confidential information includes: the identities of persons who have given information to the Department of Labor in confidence or under circumstances in which confidentiality can be implied; any employee statements in WHD's enforcement files that were obtained under these conditions; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by the attorney-client privilege and the attorney work-product privilege; personal information on living persons; individually identifiable health information; and confidential business information and trade secrets.
  25. Confidential Unemployment Compensation (UC) information, as defined in 20 CFR 603.2(b), means any unemployment compensation information, as defined in 20 CFR 603.2(j), required to be kept confidential under 20 CFR 603.4 or its successor law or regulation.
  26. 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 permission of the agency providing the information (hereinafter the "donor agency"), a court order or as required by law, including the Freedom of Information Act. Upon receipt of a public disclosure request, each party agrees to provide the other with notice of the request and an opportunity to pursue legal action to prevent the release of information.
  27. Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this 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.
  28. 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.

29. The agencies will notify one another, through the agency POC identified in this Agreement, 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.
30. In addition to the requirements above, Confidential Unemployment Compensation information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4 and any applicable state laws.
31. In the event that there is a public proceeding, such as a trial, in which confidential information may be used or testimony of WHD's employees sought, WHD requires that DWD notify WHD.
32. All public materials bearing the United States Department of Labor ("USDOL") or 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.
33. This Agreement shall be subject to immediate termination if either party determines, in its discretion, that such termination is appropriate to protect the data transferred pursuant to this Agreement.
34. Each party shall continue to be responsible for protecting the confidentiality of the data transferred pursuant to this Agreement, even after termination of this Agreement.
35. Within thirty (30) days of termination of this Agreement, each party shall provide to the other a Certificate of Destruction, showing that the confidential data received from the other has been destroyed or disposed of pursuant to the requirements of state and federal laws, including 20 CFR 603.9(b)(vi).

#### **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.

#### **Period of Agreement**

1. *This Agreement becomes effective upon the signing of both parties and will expire three (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.
2. As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**In Witness Whereof**, US Department of Labor, Wage & Hour Division, and the Indiana Department of Workforce Development have, through their duly authorized representatives, entered into this Memorandum. The parties, having read and understood the foregoing terms of this Memorandum, do by their respective signatures dated below agree to the terms thereof.

U. S. Department of Labor, Wage & Hour Division

Indiana Department of Workforce

By: Patricia Lewis

By: Deanna Oware

Title: Indianapolis District Director

Title: CFO

Date: 12/11/2020 | 13:25 EST

Date: 12/11/2020 | 16:27 EST