

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION,
THE STATE OF MICHIGAN, DEPARTMENT OF LABOR AND ECONOMIC
OPPORTUNITY, UNEMPLOYMENT INSURANCE AGENCY, AND
THE STATE OF MICHIGAN DEPARTMENT OF ATTORNEY GENERAL**

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as “DOL/WHD”), the State of Michigan’s Department of Labor and Economic Opportunity, Unemployment Insurance Agency (hereinafter referred to as the “Agency”), and the State of Michigan’s Department of Attorney General (hereinafter referred to as the “AG”) collectively referred to as “the departments” 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 Michigan.

The departments are forming this partnership to more effectively and efficiently communicate and cooperate on areas of common interest, including sharing training materials, conducting joint investigations, and sharing information as appropriate.

THEREFORE, IT IS MUTUALLY AGREED THAT:

This memorandum of understanding (“MOU”) is intended to memorialize this understanding between the departments. This MOU is a voluntary agreement that expresses the good-faith intentions of the departments; 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 the departments in working together to address the need to enforce laws relating to misclassification of employees as independent contractors, payment of wages and hours of work, employee safety and health, and other requirements designed to protect workers. For example, the departments can share information, perform joint investigations, cross train staff, and conduct outreach between the departments.

Department 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. The Agency is responsible for protecting the people of the State of Michigan from the hazards of unemployment and enforcing the Michigan Employment Security Act, Mich. Comp. Law § 421.1, et seq. As Michigan's chief law enforcement officer, the AG serves as the guardian of the legal rights of the citizens of Michigan. Among other duties, the AG investigates violations of state labor, tax, and workers' compensation laws, and brings civil and criminal prosecutions against employers who have violated these laws. Nothing in this MOU limits the MI AG's enforcement of these and other statutes.

I. Purpose

The purpose of the MOU is to maximize and improve the enforcement of the laws administered by the departments. This MOU will also encourage enhanced law enforcement and greater coordination between the departments.

II. Outreach and Education

- The departments agree to coordinate, conduct joint outreach presentations, and prepare and distribute publications, when appropriate and feasible, for the regulated community of common concern.
- The departments agree to jointly disseminate outreach materials 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 Agency or any of its divisions' name, logo, or seal must be approved in advance by the Agency.
- All materials bearing the AG name, logo, or seal must be approved in advance by the AG.

III. Department Points of Contact

- The departments designate the following Points of Contact responsible for coordinating the partnership activities and meeting annually to review terms and conditions and areas of mutual concern. The departments will notify

each other in the event of the separation or long-term absence of their contact persons.

- Points of Contact designees:

DOL/WHD: Timolin Mitchell, District Director
Detroit District Office
Phone: (313) 309-4510
Email: mitchell.timolin@dol.gov

DOL/WHD: Mary O'Rourke, District Director
Grand Rapids District Office
Phone: (616) 710-5007
Email: orourke.mary@dol.gov

Agency: Teresa Burns, State Department Administrator, Internal Controls
Phone: (313) 456-2732
Email: burnst3@michigan.gov

Agency: Timothy Kolar
Phone: (313) 456-3430
Email: kolart@michigan.gov

AG: Zachary Risk, Assistant Attorney General
Labor Division
Lead Attorney - Payroll Fraud Enforcement Unit
Phone: (517) 335-1950
Email: riskz1@michigan.gov

AG: Debbie Taylor, Division Chief
Labor Division
Phone: (313) 456-2200
Email: taylord8@michigan.gov

IV. Enforcement

Where appropriate and to the extent allowable under law,

- The departments may conduct joint investigations in the State of Michigan if deemed appropriate by the departments and if opportunity provides.
- The departments may coordinate their respective enforcement activities and assist each other with enforcement, where appropriate and to the extent allowable under law.

- The departments may make referrals of potential violations of each other's statutes, where appropriate.

V. Information

- The departments agree to exchange information on laws and regulations of common concern to the departments, to the extent practicable.
- The departments will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent allowable by law or policy.
- The departments will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, if possible.
- The departments agree to exchange information from each other's investigative and enforcement files, as appropriate and as allowed by law, for the purpose of furthering each other's investigations.

VI. Training

- The DOL/WHM and the Agency agree to cross train investigators and other staff as appropriate and feasible, subject to department resources. Joint training will be conducted to educate staff members about the laws and regulations enforced by the departments, and to discuss issues of common concern.
- The departments will exchange information related to policy or regulatory changes to state or federal laws, to the extent permissible.

VII. Previous Agreement

- This MOU replaces and supersedes any previous agreement or MOU between the three parties.

VIII. Effect of this MOU

- This MOU does not authorize the expenditure or reimbursement of any funds. Nothing in this MOU obligates the parties to expend appropriations or enter into any contract or other obligations.

- By entering into this partnership, the departments do not imply an endorsement or promotion of the policies, programs, or services of the other departments.
- Nothing in this MOU is intended to diminish or otherwise affect the authority of the departments to implement their respective statutory or regulatory functions.
- This MOU is not intended to be legally binding and does not confer any rights on any private person.
- This MOU is not intended to confer any rights against the United States, its departments, or its officers upon any private person.
- Nothing in this MOU will be interpreted as limiting, superseding, or otherwise affecting the departments' normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOU also does not limit or restrict the parties from participating in similar activities or arrangements with other entities.
- This MOU 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 Michigan.
- This MOU contains all the terms and conditions agreed upon by the departments 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 departments. This MOU is not intended to confer any right upon any private person or other third party.

IX. Exchange of Information

To the extent permitted by law, the departments 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 departments to cooperate with other government departments 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 departments that an exchange of information in which the departments are proceeding with a common legal interest is to their mutual benefit. The departments 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 making a public disclosure.

It is the policy of the departments to cooperate with other government departments to the fullest extent possible under the law, subject to the general limitation that any such cooperation must be consistent with the departments' own statutory obligations and enforcement efforts. It is the departments' view that an exchange of information in cases in which the entities are proceeding on basically the same matter is to the departments' mutual benefit. There is a need for the departments 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 departments agree as follows:

1. To exchange information on laws and regulations of common concern and interest, to the extent practicable and allowable by law and policy.
2. To 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 or the Michigan Freedom of Information Act, M.C.L. § 15.231, et seq.
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 department providing that information, except as required by law including, but not limited to, the Freedom of Information Act and the Public Records Act. Upon receipt of a public disclosure request, the Agency 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 MOU agreement as described herein. The information shall not be duplicated or re-disclosed without the express written consent or authority of the department providing the information (hereinafter the "donor department"), a court order, or as required by law, including the Freedom of Information Act.
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 departments 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-department 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. Confidential Unemployment Compensation (UC) information, as defined in 20 C.F.R. § 603.2(b), means any unemployment compensation information, as defined in 20 C.F.R. § 603.2(j), required to be kept confidential under 20 C.F.R. § 603.4 or its successor law or regulation.
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 DOL/WHD's employees sought, DOL/WHD requires that MI AG notify DOL/WHD.
9. 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 MI AG employees sought, MI AG requires that DOL/WHD notify MI AG.
10. 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 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.
11. 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.
12. The departments 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.

13. In addition to the requirements above, Confidential Unemployment Compensation information may be exchanged only subject to the confidentiality requirements of 20 C.F.R. § 603.4 and any applicable state laws, including M.C.L. § 421.11.
14. 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 departments 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, provided that state law does not require a longer retention period, 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.
15. 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.
16. 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.
17. 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.

18. Liability of the U.S. Government is governed by the Federal Torts

X. Dissemination of Factual Information

- The departments agree to jointly disseminate outreach materials to the regulated community when appropriate. Any such dissemination may not be undertaken without prior notice and approval of each party.
- All public materials bearing the United States Department of Labor ("USDOL") or DOL/WHI name, logo, or seal must be approved in advance by USDOL.
- All public materials bearing the Office of the Attorney General of Michigan name, logo, or seal must be approved in advance by the Office of the Attorney General of Michigan.
- 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.

XI. Resolution of Disagreements

- Disputes arising under this MOU will be resolved informally by discussions between the departments' Points of Contact, or other officials designated by each department.

XII. Period of this MOU

- This MOU becomes effective upon the signing of all parties and will expire three (3) years from the effective date. This MOU may be modified in writing by mutual consent of the departments. The agreement may be cancelled by any 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 13th day of January, 2020.

**The U.S Department of Labor, Wage
and Hour Division**

for: Mary K. Powell
By: *Janet E. Mitchell*
Michael Lazzeri, Regional Administrator
Date: *01/13/2020*

**State of Michigan, Department of
Labor and Economic Opportunity,
Unemployment Insurance Agency**

By: *Steve Gray*
Steve Gray, Director
Date: *11-14-19*

**State of Michigan Department of
Attorney General**

By: *Kelly Keane*
Dana Nessel, Attorney General
Date: