

**MEMORANDUM OF UNDERSTANDING
BETWEEN**

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

AND

OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

The United States Department of Labor, Wage and Hour Division (hereinafter referred to as “DOL/WHHD” or “Department”), and the Office of the New York State Attorney General (“OAG”) (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 sharing training materials, conducting joint investigations, 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/WHHD and the OAG. This MOU is a voluntary agreement that expresses the good-faith intentions of DOL/WHHD and the OAG; 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/WHHD and the OAG in working together to address the need for conducting joint investigations and sharing information as appropriate between DOL/WHHD and the OAG.

Agency Responsibilities

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.

As head of the Department of Law, the Office of Attorney General of the State of New York serves as the guardian of the legal rights of the citizens of New York and serves all New Yorkers in numerous matters affecting their daily lives. Among other areas of authority, the OAG’s Labor Bureau investigates violations of minimum wage, overtime, prevailing wage, and other basic federal and state labor laws throughout the state, and brings civil and criminal prosecutions

against employers who have violated these laws. Nothing in this agreement limits the OAG'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 DOL/WHD and by the OAG. This agreement will also encourage enhanced law enforcement and greater coordination between the agencies.

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 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 OAG name, logo, or seal must be approved in advance by the OAG.

IV. Points of Contact (POCs)

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

For DOL-WHD

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For OAG:

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V. Enforcement

Where appropriate and to the extent allowable under law,

- The agencies may conduct joint investigations in the State of New York if appropriate or if opportunity provides.
- The agencies may coordinate their respective enforcement activities and assist each other with enforcement, where appropriate and to the extent allowable under law.
- The agencies will make referrals of potential violations of each other's statutes, where appropriate.

VI. Information

- The parties will explore ways to facilitate information and data sharing, particularly in the areas of unlawful compensation practices, such as unlawful denial of minimum wages or overtime pay, and retaliation to employees for exercising rights guaranteed under laws enforced by DOL/WHd and the OAG. This includes retaliatory discipline and using employee work authorization or immigration status in a threatening or retaliatory manner.
- The parties will share information about the identification and investigation of complex or fissured employment structures, including single or joint employer, alter ego, and business models designed to evade legal accountability, such as the misclassification of employees; or when otherwise appropriate.
- 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.

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, its agencies, or its 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, and any other applicable federal laws and New York 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

It is the policy of DOL/WHH and the OAG 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/WHH's and the OAG's own statutory obligations and enforcement efforts. It is the view of both DOL/WHH and the OAG that an exchange of information in cases in which both entities are proceeding on the same, similar, or overlapping matters is to the agencies' mutual benefit. The parties also recognize a need, where appropriate, for DOL/WHH and the OAG 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 parties 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, or the Freedom of Information Law, N.Y. Pub. Off. L. § 84 et al.
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 party providing that information (hereinafter, the "donor agency"), except as required by law including, but not limited to, the Freedom of Information Act and Freedom of Information Law. Upon receipt of a public disclosure request for information provided by the donor agency, each party agrees to provide the donor agency 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 donor agency, 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 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 the OAG 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 the OAG's employees sought, the OAG requires that DOL/WHD notify the OAG.
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, 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, as soon as practicable, through the agency POC identified in this MOU and any subsequent POC, 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

- The agencies 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 DOL or DOL/WHM 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 5 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 13th day of June, 2022.

United States Department of Labor
Wage and Hour Division

Office of the New York State Attorney
General

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